SUPREME COURT OF THE UNITED STATES.

No. [illegible]

[illegible] DORSEY, PLAINTIFF IN ERROR,

vs.

MARTHA CRAY, THOMAS PALMER, JAMES GOODMAND, JOHN [illegible], HENRY [illegible], THOMAS [illegible], EDWARD [illegible].

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

[illegible] PRINTING HOUSE.



SUPREME COURT OF THE UNITED STATES.

No. 261.

ELIZA C. DEERY'S LESSEE, PLAINTIFF IN ERROR,

vs.

MARTHA CRAY, THOMAS PALMER, JAMES GOODHAND, JOHN BRIGHT, HENRY C. LEGG, THOMAS TANNER, AND THOMAS LANE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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1 THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable William F. Giles, judge of Maryland district; William Price, esquire, attorney; Washington Bonifant, esquire, marshal; James W. Chew, clerk.

Among other were the following proceedings, to wit:

ELIZA C. DEERY'S LESSEE
vs.
MARTHA CRAY, THOMAS PALMER, JAMES GOODHAND, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane.

Be it remembered, that heretofore, to wit, on the 12th day of October, in the year of our Lord eighteen hundred and sixty-three, Richard Roe, lessee of Eliza C. Deery, by Robert J. Brent, esquire, his attorney, declared in the circuit court here against John Doe in a plea of trespass and ejectment, with notice thereto annexed in form following, to wit:

Circuit court of the United States for the district of Maryland.

2 John Doe, a citizen of the State of Maryland, was attached to answer unto Richard Roe, a citizen of the State of Pennsylvania, in a plea wherefore, with force and arms, &c., at the district aforesaid, he entered into one undivided third part of all that tract or parcel of plantable land called Kent Fort Manor, lying and being on Kent Island, in the district aforesaid, containing one thousand acres, more or less, with the appurtenances, which Eliza C. Deery demised to the said Richard Roe for a term of years which is not yet expired, and ejected him from his said farm, and other wrongs to the said Richard Roe then and there did, to the great damage of the said Richard, and against the peace, government, and dignity of the United States, &c. And also, wherefore, with force and arms, &c., at the district aforesaid, he entered into one undivided third part of all that other tract or parcel of plantable land lying and being on Kent Island, in the district aforesaid, and bounding upon the west, east, and south, with Chesapeake Bay, and upon the north with a line drawn through the woods, straight east from the northeasternmost branch of the creek call Northwest Creek, unto a swamp in the said bay on the east side of said neck or tract of land, together with the appurtenances, containing one thousand acres, more or less, which Eliza C. Deery had demised to the said Richard Roe for a term which is not yet expired, and ejected him from his said farm, and other wrongs to the said Richard there did, to the great damage of the said Richard, and against the peace, government, and dignity of the United States. And thereupon the said Richard Roe, a citizen of the State of

3 Pennsylvania, by Robert J. Brent, his attorney, complains that whereas the said Eliza C. Deery, a citizen of the State of Pennsylvania, on the first day of January, in the year of our Lord eighteen hundred and sixty-two, at the district aforesaid, had demised to the said Richard Roe the said lands, with the appurtenances first above mentioned, to have and to hold the same to the said Richard Roe and his assigns from the said first day of January, A. D. 1862, for and during and unto the full end and term of seventeen years from thence next ensuing to be fully complete and ended. And also that whereas the said Eliza C. Deery, a citizen of the State of Pennsylvania, on the first day of January, in the year of our Lord eighteen hundred and sixty-two, at the district aforesaid, had demised to the said Richard Roe, a citizen

of the State of Pennsylvania, the said lands, with the appurtenances, secondly above mentioned, to have and to hold the same to the said Richard Roe and his assigns, from the first day of January, in the year aforesaid, for and during and unto the full end and term of seventeen years from thence next ensuing to be fully completed and ended. By virtue of which said several demises the said Richard Roe entered into the said several lands first and secondly above mentioned, with the appurtenances, and was and became possessed thereof for the said several terms so to him thereof respectively granted as aforesaid, and the said Richard Roe being so thereof possessed, the said John Doe, a citizen of the State of Pennsylvania, afterwards, to wit, on the 3d day of January, A. D. 1862, with force and
4 arms entered into the said lands, with the appurtenances, first and secondly above mentioned, to which the said Richard Roe was so interested in manner and for the several terms aforesaid, which are not yet expired, and ejected the said Richard Roe from his said several farms, and other wrongs to the said Richard then and there did, to the great damage of the said Richard, and against the peace, government, and dignity of the United States. Wherefore the said Richard Roe saith he is injured and hath sustained damage to the value of $500. And therefore he brings his suit, &c.

ROBERT J. BRENT, *for Plaintiff.*

To Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, Thomas Lane:

I am informed that you are in possession of or claim title to the premises in this declaration mentioned or some part thereof, and I being sued in the action as a casual ejector and having no title or claim to said premises, do advise you to appear in the circuit court of the United States for the district of Maryland, to be held on the first Monday of November next, at the court-house, in the city of Baltimore, by some attorney of said court, and then and there, by rule of said court, to cause yourself to be made defendants in my stead; otherwise, I shall judgment to be entered against me, and you will be turned out of possession.

Your friend,

JOHN DOE.

Dated this 12th day of October, 1863.

5 Copies of which said declaration and notice were made and sent to the marshal for the Maryland district aforesaid, thereon endorsed: "Copy to be served on tenants in possession or to be set up on the premises if no tenant, &c."

At which said first Monday in November, in the year last aforesaid, being the day of the service of the aforegoing declaration in ejectment, comes into the circuit court here the said Richard Roe, lessee of the said Eliza C. Deery and the marshal of the Maryland district aforesaid, to wit, Washington Bonifant, gentleman, to whom copies of the said declaration and notice in ejectment aforesaid were, in form aforesaid, made and sent, certifies the service thereof to the court here in form following, to wit:

In the circuit court of the United States for the fourth circuit and district of Md.

Eliza C. Deery's Lessee *vs.* Martha Cray, Thos. Palmer, James Goodhand, Jno. Bright, Henry C. Legg, Thos. Tanner, Thos. Lane.	Action of ejectment.

Certified copies of nar. and notice in ejectment served personally by leav-

ing the same in the hands of Martha Cray, James Goodhand, Henry C. Legg, tenants in possession, and certified copies of said nar. and notice were left at the dwelling-house of Thomas Palmer, with his wife, at the dwelling-house of John Bright, with his father, James Bright, at the dwelling-
6 house of Thomas Tanner, with his son, and at the dwelling-house of Thomas Lane, with his wife, all of which copies were served as above mentioned, on the 13 day of October, 1863. So answers

WASHINGTON BONIFANT, *U. S. Marshal.*

Whereupon the said Richard Roe, lessee of the said Eliza C. Deery, prays that the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, to his declaration aforesaid, may appear and answer, or in default thereof, judgment be rendered against the said John Doe, the said casual ejector.

Whereupon the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, by S. T. Wallis, and John H. Thomas, and Thomas S. Alexander, esquires, their attorneys, appear in the circuit court as tenants in possession of the premises, to be made defendants in the place of the said John Doe, the casual ejector.

Whereupon it is ruled by the court here, with the consent of the said Richard Roe, lessee of the said Eliza C. Deery, by his attorney aforesaid, and the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, who claim the title in question, by their attorneys aforesaid, that the said Martha Cray,
7 Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Legg be admitted defendants in the place of the said John Doe, the casual ejector, and that they immediately receive a declaration, and plead thereto the general issue, and at the trial to be had the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane should appear in their proper person, or by their attorney or counsel, and confess lease, entry, and actual ouster and expulsion of so much of the premises in the said declaration of the said Richard Roe, lessee of the said Eliza C. Deery, as is in the possession of the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, or any other person claiming by or under their title, or in default thereof judgment be entered against the defendant, John Doe, the casual ejector, but that prosecution be staid against him until he should make default in any of the premises.

And it was further ruled by the court here, with the consent of counsel, that if, by reason of such default, the said Richard Roe, lessee as aforesaid, should become non-suit at the trial, the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane should take no advantage thereof, but should pay the said
8 Richard Roe, lessee as aforesaid, his costs, &c.

And it was further ruled by the court here that if upon the trial of the issue a verdict should be given for the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, or the said Richard Roe, lessee as aforesaid, should prosecute his declaration for any other cause than for the not confessing lease, entry, and ouster as aforesaid, the said Eliza C. Deery, lessor of the said Richard Roe, should pay costs, &c.

And thereupon the said Richard Roe, lessee as aforesaid, declares against the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, in the plea aforesaid, in manner and form following, to wit:

(Here insert nar., commencing on page one, as against Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, omitting the notice.)

Whereupon the said Richard Roe, lessee as aforesaid, by his attorney aforesaid, prays that the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane to his declaration aforesaid may answer.

And thereupon the said Martha Cray, James Goodhand, Thomas Palmer, John Bright, Henry C. Legg, and Thomas Tanner, by their attorneys aforesaid, file in court here the following pleas, which are in *in* form following, to wit:

9 In the circuit court for the Maryland district, November term, 1863.

MARTHA CRAY AND OTHERS *ats.* DOE, EX DEM. DEERY. } Ejectment.

And the said defendant, Martha Cray, by Wallis & Thomas, her attorneys, comes and defends the force and injury, when, &c., and says that she is not guilty of the said ejectment and trespass in the said declaration laid to her charge in manner and form as the said plaintiff hath complained against her. And of this she puts herself upon the country, &c.

And the said defendant, by his attorneys aforesaid, takes defence according to her pretensions as they shall appear to be laid down on the return of a warrant of resurvey to be issued in this cause.

WALLIS & THOMAS, *Att'ys for Def't.*

In the circuit court for the Maryland district, November T., 1863.

THOMAS PALMER AND OTHERS *ats.* DOE, EX DEM DEERY. } Ejectment.

And the said defendant, Thomas Palmer, by Wallis & Thomas, his attorneys, comes and defends the force and injury, when, &c., and says that he is not guilty of the said ejectment and trespass in the said declaration laid to his charge in manner and form as the said plaintiff hath complained against him. And of this he puts himself upon the country.

And the said defendant, by his attorneys aforesaid, takes defence
10 according to his pretensions as they shall appear to be laid down on the return of a warrant of resurvey to be issued in this cause.

WALLIS & THOMAS, *Att'ys for Def't.*

In the circuit court for the Maryland district, November T., 1863.

JAMES GOODHAND AND OTHERS *ats.* DOE, EX DEM. DEERY. } Ejectment.

And the said defendant, James Goodhand, by Wallis & Thomas, his attorneys, comes and defends the force and injury, when, &c., and says that he is not guilty of the said ejectment and trespass in the said declaration laid to his charge in manner and form as the said plaintiff hath complained against him. And of this he puts himself upon the country.

And the said defendant, by his attorneys aforesaid, takes defence according to his pretensions as they shall appear to be laid down on the return of a warrant of resurvey to be issued in this cause.

WALLIS & THOMAS, *Att'ys for Def't.*

In the circuit court for the Maryland district, November T., 1863.

JOHN BRIGHT AND OTHERS *ats.* DOE, EX DEM. DEERY. } Ejectment.

And the said defendant, John Bright, by Wallis & Thomas, his attorneys, comes and defends the force and injury, when, &c., and says that he is not guilty of the said trespass and ejectment in the said declaration laid
11 to his charge in manner and form as the said plaintiff hath complained against him. And of this he puts himself upon the country.

And the said defendant, by his attorneys aforesaid, takes defence according to his pretensions as they shall appear to be laid down on the return of a warrant of resurvey to be issued in this cause.

WALLIS & THOMAS, *Att'ys for Def't.*

In the circuit court for the Maryland district, November T., 1863.

HENRY C. LEGG AND OTHERS *ats.* DOE, EX DEM. DEERY. } Ejectment.

And the said defendant, Henry C. Legg, by Wallis & Thomas, his attorneys, comes and defends the force and injury, when, &c., and says that he is not guilty of the said ejectment and trespass in the said declaration laid to his charge in manner and form as the said plaintiff hath complained against him. And of this he puts himself upon the country, &c.

And the said defendant, by his attorneys aforesaid, takes defence according to his pretensions as they shall appear to be laid down on the return of a warrant of resurvey to be issued in this cause.

WALLIS & THOMAS, *Att'ys for Def't.*

In the circuit court for the Maryland district, November T., 1863.

THOMAS TANNER AND OTHERS *ats.* DOE, EX DEM DEERY. } Ejectment.

12 And the said defendant, Thomas Tanner, by Wallis & Thomas, his attorneys, comes and defends the force and injury, when, &c., and says that he is not guilty of the said ejectment and trespass in the said declaration laid to his charge in manner and form as the said plaintiff hath complained against him. And of this he puts himself upon the country.

And the said defendant, by his attorneys aforesaid, takes defence according to his pretensions as they shall appear to be laid down on the return of a warrant of resurvey to be issued in this cause.

WALLIS & THOMAS, *Att'ys for Def't.*

And the said Richard Roe, lessee as aforesaid, by his attorney aforesaid, in like manner, &c.

Thereupon, on motion of the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Palmer, and Thomas Lane, by their attorneys aforesaid, it is ruled by the court here that the said Richard Roe, lessee as aforesaid, give security on or before the day of for all costs and charges that the said defendants may be put to, in case the said Richard Roe, lessee as aforesaid, shall be non-suited or judgment be given against him in the plea aforesaid, or in default thereof that judgment of non-suit by the court here will be entered against him. The same day is given to the said defendants then and there, &c.

Thereupon, on motion of the said Thomas Lane, by his attorneys aforesaid, leave is given by the court here to the said Thomas Lane to as-
13 certain his defence and to answer to the declaration aforesaid of the said Richard Roe, lessee as aforesaid, in the plea aforesaid, until the first Monday in April next. The same day is given to the said Richard Roe, &c. At which said first Monday in April, in the year of our Lord eighteen hundred and sixty-four, till which day the said Thomas Lane had leave to ascertain his defence, and then to answer the declaration aforesaid of the said Richard Roe, lessee as aforesaid, in the plea aforesaid, comes again into the circuit court here as well the said Richard Roe, lessee as aforesaid, by his attorney aforesaid, as the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, by their attorneys aforesaid.

Thereupon, on motion of the said Thomas Lane, by his attorneys aforesaid, leave is further given by the court here to the said Thomas Lane to ascertain his defence and to answer to the declaration aforesaid of the said Richard Roe, lessee as aforesaid, in the plea aforesaid, until the first Monday in November next. The same day is given to the said Richard Roe, &c. At which said first November, in the year last aforesaid, till which said day the said Thomas Lane had leave to ascertain his defence, and then to answer the declaration aforesaid of the said Richard Roe, lessee as aforesaid, by
Robert J. Brent and Andrew Sterrett Ridgely, esquires, his attor-
14 neys, as the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, by John H. Thomas, S. Teackle Wallis, and Thomas S. Alexander, esquires, their attorneys. Whereupon comes here into court, in his proper person, Robert J. Brent, of the district aforesaid, and who by the court here is considered good and sufficient, and undertakes for the said Richard Roe, lessee as aforesaid, that if the said Richard Roe, lessee as aforesaid, in the plea aforesaid, shall be non-suited, or judgment therein be given against him, then the said Richard Roe, lessee as aforesaid, shall pay unto the aforesaid Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, all such costs and charges by them about their defence in this part sustained, as shall be adjudged unto the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, by the court here, or that he, the said Robert J. Brent, will do the same for him. And the said Thomas Lane, by his attorneys aforesaid, defends the force and injury, when, &c., and says that he is not guilty of the trespass and ejectment aforesaid in the declaration aforesaid mentioned, in manner and form as the said Richard Roe, lessee as aforesaid, above complains against him. And of this he puts himself upon the country.

And the said Richard Roe, lessee as aforesaid, by his attorneys aforesaid, in like manner, &c.

Whereupon for trying the issue aforesaid, between the parties
15 aforesaid within joined, it is ordered by the court here that a jury thereon appear before the court here immediately, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c. Therefore it is ordered by the court here that twenty persons from the pannel of petit jurors returned to the court by the marshal of the Maryland district aforesaid, be drawn by ballot; and thereupon the twenty persons being so drawn by ballot and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons being called, come, to wit: William R. Sanderson, William Bamberger, James Burnside, Jehu Peregoy, Henry C. England,

Gassaway H. Laughlin, Alexander F. Gaw, Stephen P. Heath, James Jeffrey, Joseph P. Cantwell, Rudolph Bennett, and Noah Webster, who, being empannelled and sworn, to say the truth in the premises.

And afterwards, to wit, on the 22d day of November, in the year last aforesaid, the said Martha Cray, Thomas Palmer, and James Goodhand, by their attorneys aforesaid, the said John Bright, by his attorney aforesaid, the said Henry C. Legg and Thomas Tanner, by their attorneys aforesaid, file in court here the following defences, to wit:

Circuit court U. S., 4th circuit and district of Maryland.

DEARY'S LESSEE
vs.
BRIGHT AND OTHERS.

The defendants Martha Cray, Thomas Palmer, and James Goodhand take defence for all that part of the lands in controvercy which lies to the
16 south of the line across of the whole tract which divides the southern moiety or half part of the entire tract from the northern moiety or half part of the entire tract.

TH. S. ALEXANDER,
S. T. WALLIS,
For Def'ts Martha Cray, Thos. Palmer and Jas. Goodhand.

Circuit court U. S., 4th circuit and district of Maryland

DEARY'S LESSEE
vs.
BRIGHT AND OTHERS.

The defendant, John Bright, takes defence for all that part of the lands in controversy which lies between Long Creek on the east and the enclosures of Samuel A. Chew and Lowman Chew, successively, on the west, and northwardly of the line drawn on the plat across the entire tract and separating the northern from the southern moiety or half part of the entire tract, usually term the Indian Creek Farm.

TH. S. ALEXANDER,
S. T. WALLIS,
For Def't Bright.

Circuit court U. S., 4th circuit and district of Maryland.

DEARY'S LESSEE
vs.
BRIGHT AND OTHERS.

The defendants Henry C. Legg and Thomas Tanner take defence for all that part of the lands in controversy which lies to the east or eastward of Long Creek and is usually called Long Point Farm, and lies also
17 north of the line drawn on the plat separating the N. from the S. half of K. Fork Manor.

TH. S. ALEXANDER,
S. T. WALLIS,
For Def'd'ts Legg and Tanner.

And afterwards, to wit, on the 23d day of November, in the year last aforesaid, the said Richard Roe, lessee as aforesaid, by his attorneys aforesaid, files in court here the following motion, to wit:

Circuit court U. S.

DEERY'S LESSEE
vs.
JOHN BRIGHT AND OTHERS.

The above plaintiff moves the court here to reject the papers filed on the 22d November, 1864, by the several defendants, after the jury were empannelled, and moves that the same be not received.

R. J. BRENT,
A. S. RIDGELY,
W. M. ADDISON, *for Pl'ff.*

And the jurors aforesaid, upon their oath, do say that the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane are not guilty of the trespass and ejectment aforesaid, as the said Richard Roe, lessee as aforesaid, hath above alleged.

Therefore it is considered by the court here that the said Richard Roe, lessee as aforesaid, take nothing by his said declaration, but that
13 he go in mercy for his false complaint; and that the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane go thereof, without day, &c. It is also considered by the court here, that the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane do recover against the said plaintiff the sum of for their costs and charges by them about their defence in this behalf sustained, according to the form of the statute in such case made and provided; and that the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane have thereof their execution.

Memorandum.—Judgment upon verdict was entered in this cause on the day of November, 1864, for defendants for costs.

Test: JAMES W. CHEW, *Clerk.*

Memorandum.—Before the jurors aforesaid withdrew from the bar of the court here the said Richard Roe, lessee as aforesaid, by his attorneys aforesaid, tenders to the court here the following bills of exceptions, and which were by the court here signed and sealed, and which are in form following, to wit:

Plaintiff's 1st exception.

U. S. circuit court.

DEERY'S LESSEE
vs.
——— ———.

19 At the trial of this cause the plaintiff, to support the issue, on her part, read in evidence the patent for Kent Fort Manor, the agreement of counsel, and the plat or map therein referred to, made a part hereof.

Copy of patent of Kent Fort Manor.

CECILIUS C'T:

Know ye that we, for and in consideration that our dear brother Leonard Calvert, esq'r, our lieutenant gen'ral of our province of Maryland, hath done unto us many acceptable services, and sustained much hazard and charge in reducing the Isle of Kent under our government, have therefore of and with the advice of our said dear brother, and at his humble motion and request,

give, granted, enfeoffed, and confirmed, and by these presents, for us and our heirs, doe give, grant, enfeoff, and confirm, unto our right faithful and beloved counsellor, Giles Brent, assignee of our said brother, all that neck of land lyeing nearest together about Kent Ford, in the said Isle of Kent, bounding upon the west, east, and south with Chesapeak Bay, upon the north with a line drawn through the woods straight east from the northeastermost branch of the creek called Northwest Creek unto a swamp in the said bay, on the east side of the said neck, containing by estimation and now set forth for one thousand acres, be it more or less, and all woods, quarries, mines, (royal mines excepted,) waters, royal fishes, fishings, fishing
20 places, advowsons, and patronages of churches, wrecks not claimed by the owner within a year and a day, waifes, strays, felon's goods, free warren liberty of hunting, hawking, and fowling for any sort of game whatever, and all other profits, advantages, comodities, emoluments, and hereditaments in or upon the same, or any part thereof, saving to us and our heirs our royal jurisdiction and seigniory as absolute lords and proprietors of the said province of Maryland, and saving unto Giles Basha and Thomas Allen, their heirs and assignes, their freeholds granted or to be granted—to them which, nevertheless, we will that they, and either of them, hold of the said Giles Brent and his heirs, paying the rents and performing the services for the same unto our said brother in such manner as the same ought to have been paid unto us or our heirs. To have and to hold ye same unto him, ye s'd Giles Brent, and his heirs forever. To be holden of us and our heirs, as of our honour of St. Maries, in free and common soccage by fealty only for all services, yielding and paying therefore yearly to us and our heirs, lords and proprietaries of the said province, at the place where the mill now standeth, two barrells of good corne at the feast of our Lord's nativity, and we will and appoint that the said parcell or neck of land shall from henceforth be one entire manor, and be called by the name of the Manor of Kent Fort, and that 300 acres of the same shall be forever hereafter accounted and known for the demesn lands of the said manor, and shall be set forth by distinct meates and bounds for that purpose, and that the
21 said Giles Brent and his heirs may at all times hereafter grant or convey any other part of the premises (excepting the said 300 acres) unto any other person or persons of British or Irish descent, either in fee-simple or fee-taile for life, lives, or years, to be held of him, the said Giles Brent, and his heirs, as of his Manor of Kent Fort, by and under such rents and services as he or they shall think fit. And further, we doe, for us and our heirs, give and grant unto the said Giles Brent and his heirs forever, that he and they may and shall have, hold, use, and enjoy within the said manor one court, in the nature of a court baron, and in that court hold pleas of all and all manner of actions, suits, trespasses, quarrell, debts, and demands whatsoever happening or arising within the said manor, which in debt or damages do not exceed the sume of forty shillings of lawfull English money, to be from time to time held by the said Giles Brent or his heirs, or his or their steward, from time to time to be appointed, and by the free suitors of the said manor. And further, shall and may forever hereafter twice in every year, viz: in the month after Michaelmass and ye month after Easter have, hold, and enjoy a court, leet, or view of frank pledge, and all that to a court, leet, or view of frank pledge doth any ways belong or appertain, to be holden by him and them, and by his or their seneschall or steward, from time to time, by him and them to be appointed, and therein to enquire of all
22 crimes and offences comitted, or to be comitted, within the precincts of the same manor, which may or ought by the law or custome of England to be enquired of in any court, leet, or view of frank pledge within the realm of England, and to his and their own use, to have and receive

all and singular issues, profits, fines, amerciaments, and perquisites whatsoever which hereafter shall or may arise or come by reason of the said courts, or either of them.

Given under our great seal of our said province, at our honour of St. Maries, the seventh day of September, anno Domini 1640. Witness our said dear brother, &c.

LAND OFFICE OF MARYLAND.

I hereby certify that the aforegoing is truly taken and copied from Liber No. 1, folios 47, 48, and 49, one of the land record books of this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the land office of Maryland this 5th day of October, 1863.

[SEAL.] WM. L. W. SEABROOK, *Comm'r of the Land Office.*

Agreement of counsel.

Circuit court of the U. S. for the Maryland district.

DEERY'S LESSEE
vs.
BRIGHT AND OTHERS.

It is agreed that the defence on warrant shall be withdrawn, so that the necessity for locations on either side may be dispensed with; and
23 that the plaintiff and defendants, or either or any of them, respectively, may offer their title papers in evidence, and their proofs of possession, under said title papers or otherwise, in the same manner and to the same effect as if said title papers and possession had been correctly located and counter-located.

It is further agreed that all the lands for the recovery of which this action is brought lie on Kent Island, south of the line described in the patent Fort Manor as the line drawn east from N. West Creek, the location and running of which line are dispensed with.

Also that a duly certified copy of the map of Kent Fort Manor, marked No. 10, and filed in the court of chancery of Maryland on the 8th of November, 1802, in the matter of the petition of William Bryan and others for the partition of the real estate of Arthur Bryan, deceased, may be used by either party at the trial for the purpose of illustration, and that the same may be used in evidence for any purpose for which it would be competent, if the whole record were produced without the necessity of producing the whole record. The said map is admitted to be a correct location of Kent Fort Manor, as it purports, and the location thereon of what is called "Susanna Tate's moiety" is admitted to be a correct location of the share of the said manor assigned in the said proceeding to Susanna Tate, sister of the said Arthur Bryan, in the partition of the said Bryan's real estate, but the title of said Bryan or his heirs to said real estate is not admitted.

If the plaintiff shall recover a verdict for any part of the land
24 mentioned in the declaration, it is agreed that the jury may by their verdict locate and describe said part to the same effect as if said part were correctly located on plats in the cause, and that the map hereinbefore mentioned may be referred to by the jury in their verdict for that purpose if they see fit.

It is further agreed that the plaintiff shall leave to offer in evidence the special verdict in the case of Brent's Lessee *vs.* Tasker, as reported in 1 Harris and McHenry's Reports, 89, to prove the pedigree therein set forth, to the same effect as if a complete copy of the record in the said cause were produced.

ROBERT J. BRENT, *for Pl'ff.*
S. T. WALLIS, *for Def'ts.*

William Brent, senior, and the lands and premises [illegible] time of the making the will aforesaid, and at the time of the death of the aforesaid William Brent, senior, were in the tenure of the said William

produced.

ROBERT J. BRENT, *for Pl'ff.*
S. T. WALLIS, *for Def'ts.*

Plat or map referred to in agreement.

In the circuit court, United States, 4th circuit, Maryland district, November term, 1864.

DEERY'S LESSEE
vs.
CRAY AND OTHERS.

It is agreed that the plat called for in plaintiff's 1st exception shall be used in the Supreme Court, and not be inserted in the record.

R. J. BRENT, *for Pl'ff.*
S. T. WALLIS,
For Def'ts, whom he represents.

25 And also read in evidence the record of the case of Brent's lessee *vs.* Tasker, as reported in 1 Harris & McHenry's Reports, p. 89, made a part hereof; and also read in evidence the extract from the debt books for Queen Anne's County, made a part hereof.

Extract from debt book.

William Brent, Dr.

Kent Fort Mannor, 20 buss. corn	£1, 000	
Wright's Fortune acc's purchase.....	120	2 5

LAND OFFICE OF MARYLAND.

I hereby certify that the aforegoing is truly copied from the debt book of Queen Ann's County for the year 1767, folio 6, now one of the land record books of this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the land office of Maryland, this 15th day of November, 1864.

[SEAL.] WM. L. W. SEABROOK, *Com'r of the Land Office.*

And then to derive title in herself, offered to read in evidence the deed of William Brent and others to Samel Chew, made part hereof.

Deed.

This indenture, made this twenty-eighth day of May, in the year of our Lord one thousand eight hundred and eighty-five, between Elinor Brent, executrix, William Brent and Daniel Carroll Brent, acting executors of
26 the last will and testament of William Brent, senior, late of the commonwealth of Virginia, deceased. The aforesaid William Brent, party to these presents, also being heir-at-law to the aforesaid William Brent, senior, deceased, all of the commonwealth of Virginia, on the one part, and Samuel Chew, of Anne Arundel County and the State of Maryland, on the other part, witnesseth, that whereas the aforesaid William Brent, senior, deceased, by his last will and testament, bearing date the seventh day of January, in the year of our Lord one thousand seven hundred and eighty-two, did constitute and appoint the aforesaid Elinor Brent executrix, and William Brent and Daniel Carroll Brent executors of the will aforesaid, and did by the will aforesaid authorize them to sell and convey in fee simple the land and premises hereafter herein to be mentioned. And whereas William Brent aforesaid, one of the parties to these presents, is heir-at-law to the aforesaid William Brent, senior, and the lands and premises hereafter mentioned at the time of the making the will aforesaid, and at the time of the death of the aforesaid William Brent, senior, were in the tenure of the said William

Brent, senior, and since his death have been, and still are, in the tenure of the said Elinor Brent, William Brent, and Daniel Carroll Brent: Now, this indenture witnesseth that the aforesaid Elinor Brent, William Brent, and Daniel Carroll Brent, pursuant to the authority granted andto them committed, and in their and each of their rights and titles as executors or otherwise, jointly and separately, for and in consideration of the sum of seven thousand pounds, current money of Maryland, to them in hands paid by
27 the said Samuel Chew at or before the ensealing and delivery of these presents, the receipt whereof they and each of them do hereby acknowledge, and the said Samuel Chew, his executors and administrators, of the same and every part thereof do clearly exonerate, acquit, and discharge by these presents. They, the said Elinor Brent, William Brent, and Daniel Carroll Brent, jointly and separately, have given, granted, bargained, and sold, aliened, released, enfeoffed, and confirmed, and do by these presents give, grant, bargain, and sell, alien, release, enfeoff, and confirm, Samuel Chew, his heirs and assigns forever, all that tract or parcel of land lying and being in Queen Ann's County and the State of Maryland, called Kent Fort Manor, containing by estimation two thousand one hundred and fifty acres, more or less, together with all and singular the buildings, waters, fisheries, rents, profits, heriditaments, easements, advantages and appurtenances, and every part and parcel thereof, to the same tract of land belonging or in anywise appertaining, and all reversion or reversions, remainder or remainders of all and singular the aforesaid tract of land and premises, with the appurtenances, hereby granted or mentioned to be granted, and every part and parcel thereof, and also every estate and estates, rights, titles, interest, claims or demands whatsoever of them, the said Elinor Brent, William Brent, and Daniel Carroll Brent, or any or either of them, as executors, or otherwise, of what nature or kind soever, of, into, or out of the said tract of land and premises, with the appurtenances, and every part and parcel thereof, and also all deeds, writings, charters, and muniments whatsoever,
28 touching or concerning the aforesaid tract of land and premises, with the appendages and appurtenances whatsoever, hereby granted or mentioned, and intended to be granted, bargained, and sold, and every part and parcel thereof, with their and every of their appurtenances, unto the said Samuel Chew, his heirs and asseyns forever, clearly and absolutely acquitted and discharged of the claim of dower of the said Elinor Brent, and of all claims and incumbrances by, from, or under the said William Brent, senior, deceased, and of all persons deriving title under him, to the only proper use, and behoof of him, the said Samuel Chew, his heirs and assigns forever. And the said Elinor Brent, William Brent, and Daniel Carroll Brent do, for themselves, their heirs, executors, and administrators, jointly and separately, covenant, promise, and agree to and with the said Samuel Chew, his heirs and assigns, that if the aforesaid Samuel Chew, his heirs or assigns, shall happen at any future time to be legally evicted, dispossessed, or kept out of possession of all or any part of the before-mentioned land and premises, that then and in such case the said Elinor Brent, William Brent, and Daniel Carroll Brent, their heirs, executors, or administrators, will refund and repay back to the said Samuel Chew, his heirs, executors, administrators or assigns so evicted, dispossessed, or kept out of possession the sum of seven thousand pounds, current money of Maryland aforesaid, the aforesaid purchase-money for the land and premises aforesaid, or such part thereof as the land that may be so evicted, dispossessed, or recovered, may amount
29 to, rated at a price porportionable to the sum aforesaid, hereinbefore mentioned and expressed as the purchase-money and consideration for the whole tract of land aforesaid, together with the legal interest thereon from the time of such eviction, dispossession or recovery, and all legal costs

that may accrue thereon; and the said Elinor Brent, William Brent, and Daniel Carroll Brent, for themselves, their heirs, executors, and administrators, jointly and separately, do further covenant, promise, and agree to and with the said Samuel Chew, his heirs and assigns, that they, the said Elinor Brent, William Brent, and Daniel Carroll Brent, and their and each of their heirs, executors, and administrators, jointly and separately, the aforesaid tract of land and premises hereby granted or mentioned, and intended to be granted, and every part and parcel thereof, and all and singular their and every of their rights, members, and appurtenances whatsoever, unto the said Samuel Chew, his heirs and assigns forever, against the said Elinor Brent, William Brent, and Daniel Carroll Brent, and their heirs, and against any of them, and any of their heirs, and against all and every person claiming by, thro', or under them or their heirs, or any of them, and against all and every person or persons claiming by, thro,' or under the aforesaid William Brent, sen'r, deceased, and will forever warrant and defend. In witness whereof, the parties *parties* hereto have set their hands and affixed their seals the day and year above written.

30 ELEANOR BRENT. [SEAL.]
WM. BRENT. [SEAL.]
DAN'L CARROLL BRENT. [SEAL.]

Signed, sealed, and delivered, in the presence of—
ELIZA MARSHALL.
GEORGE BERENT.
DANIEL BRENT.

Signed, sealed, and delivered in the presence of—
THOS. LEE, Jun.
LUDWELL LEE.

On the back of the foregoing deed it was thus written, viz:

Know all men by these presents that we, Eleanor Brent, William Brent, and Daniel Carroll Brent, having signed, sealed, and delivered the within indenture in due form of law, whereby we and each of us have, for the consideration therein mentioned, granted and conveyed unto the within-mentioned Samuel Chew, and his heirs and assigns forever, all that tract of land lying in Queen Anne's County called Kent Fort Manor, containing by estimation two thousand one hundred and fifty acres, together with all and singular the appurtenances, the executor of which deed we and each of hereby do acknowledge, and for perfecting thereof we do hereby constitute and appoint Richard Sprigg, Charles Steuart, and William Steuart, of Anne Arundel County, gentlemen, them or any one of or two of them to be our true and lawful attorneys, and we do hereby authorize and empower the aforesaid Richard Sprigg, Charles Steuart, William Steuart, them or any one or two of them, for us and in our names, and for our behalves,
31 to acknowledge the aforesaid within indenture to be our and each of our act and deed, and the land and premises therein mentioned to be right estate and inheritance of the within Samuel Chew, his heirs and assigns forever, according to the purport, true intent, and meaning thereof, and the act of assembly in case made and provided, before any judge of the general court of the State of Maryland, or any two of the justices of the State of Maryland for Queen Anne's County, or before such person or persons in Maryland who shall or may be authorized to receive the same according to the laws of the said State, as fully and effectually, to all intents and purposes, as we ourselves might or could do were we there personally present and did the same, hereby ratifying and confirming the said acknowl-

edgement, and the within indenture and consenting to the registring and enrolling of the same. In witness whereof, we have hereunto set our hands and fixed our seals this twenty-eighth day of May, in the year of our Lord one thousand seven hundred and eighty-five.

ELEANOR BRENT. [SEAL.]
WM. BRENT. [SEAL.]
DAN. CARROLL BRENT. [SEAL.]

Signed, sealed, and delivered in presence of—
ELIZA MARSHALL.
GEORGE BERENT.
DANIEL BRENT.
LUDWELL LEE.

MARYLAND:

On the first day of June, 1785, before the subscriber, one of the judges of the general court, came George Brent, and made oath on the Holy Evangelist of Almighty God that on the 28th day of May, in the year
32 of our Lord 1784, he saw Eleanor Brent, William Brent, and Daniel Carroll Brent, parties to the within indenture and the above written power of attorney, sign, seal, and deliver the same as their proper acts and deeds, in the presence of this deponent, and that this deponent and the said Eliza Marshall, Daniel Brent, and Ludwig Lee subscribed their names thereto as witnesses at the request of the said parties.

A. C. HANSON.

MARYLAND:

On the first day of June, 1785, before the subscriber, one of the judges of the general court, came Eleanor Brent, William Brent, and Daniel Carroll Brent, by William Steuart, of Anne Arundel County, gentleman, their attorney, and acknowledged the within indenture and instrument of writing to be the act and deed of the within-mentioned Eleanor Brent, William Brent, and Daniel Carroll Brent, and the lands and premises therein mentioned to be right estate and inheritance of the within-mentioned Samuel Chew, his heirs and assigns forever, according to the true intent and meaning of the within indenture and instrument of writing and the act of assembly in such case made and provided.

A. C. HANSON.

Recorded 1st day of June, 1785.

MARYLAND, *sc't:*

I, George Earle, clerk of the court of appeals of the State of Maryland, do hereby certify that the aforegoing is a full and true copy taken from Liber T. B. H., No. 1, folios 379, &c., one of the land records of the late gen-
33 eral court for the State of Maryland, deposited in and belonging to the office of the court of appeals of said State.

In testimony whereof, I hereto set my hand as clerk and affix the seal of the said court of appeals this 26th day of March, eighteen hundred and sixty-four.

[SEAL.]

GEORGE EARLE,
Clerk Court of Appeals of Md.

But the court rejected the same as inadmissible; and thereupon the plaintiff excepts, and this her bill of exceptions is signed, sealed, and enrolled this 19th Nov., 1864.

WILLIAM F. GILES. [SEAL.]

Plaintiff's 2d exception.

After the evidence stated in the aforegoing exception, made a part hereof, the plaintiff renewed his offer to read in evidence the aforesaid deed of William Brent and others to Samuel Chew, and accompanied his said offer with a tender of evidence to show that the said Samuel Chew entered into the possession of the lands described in said deed under said deed, and held the same peaceably and uninterruptedly until his death in July, 1786; and that after his death the said land was held and possessed continuously to the bringing of this suit by those claiming under him, and that the plaintiff's lessor is one of the heirs of Samuel Chew and of those claiming under him as aforesaid; to which said renewed offer, accompanied with the tender of further evidence as aforesaid, the defendant's counsel objected to the
34 said deed in the said evidence proposed to be offered as aforesaid; and said counsel further suggested that possibly it might be more convenient to postpone the discussion and determination of the said objection until after the evidence tendered should be offered, as it might be that the evidence actually given might not come up to the offer. The counsel for the plaintiff insisted forthwith in proceeding in the discussion of said objection. But the court said it had the power in its discretion to order on the argument on the objection at once, or to postpone the hearing and decision thereof until after the evidence tendered had been heard by the court, and referred to rule 87 of this court, made a part hereof.

Rule 87.

LXXXVII. In the trial of cases the plaintiff's counsel shall fully state his case and produce the evidence in support of it.

The defendant's counsel shall then state his defence and produce the evidence in support of it.

If the testimony on either side shall not be objected to by the adverse party at the time it is offered, the court will consider it as being admitted, but the court, in their discretion, will hear the objection to such evidence.

If any evidence shall be objected to, the court will, in their discretion, hear and decide on the objection when made, or will direct the trial to go on until the residue of the case is before the court and jury; and then the court will consider the objection and decide thereon. When the evidence shall thus have been closed on both sides, either party shall be at liberty
35 to apply generally to the court for their direction to the jury in matter of law arising on all facts, but at the same time shall state all the points and objections on which he intends to rely in support of such application, and the party opposing the direction as prayed for shall state all the points and objections on which he intends to rely.

And thereupon the counsel for the plaintiff read in evidence the deed aforesaid, and also the last will of Samuel Chew, deceased, made part hereof.

Copy of Samuel L. Chew's last will.

In the name of God, amen. I, Samuel Chew, of Herring Bay, in Ann Arundel County and State of Maryland, being in perfect health and of sound and disposing mind, memory, and understanding, considering the certainty of death and the uncertainty of the time thereof, and being desirous to settle my worldly affairs, do hereby make and publish this to be my last will and testament in manner and form following, that is to say: Imprimis, I give and bequeath unto my dear wife, Elizabeth Chew, all my real estate upon

Kent Island, in Queen Ann's County, known by the name of Kent Fort Manor, and lately purchased of William Brent, esq'r, of Virginia, for and during her natural life, and after her death to my son, Samuel Lloyd Chew, and his heirs forever, in fee simple. And also I give and bequeath to my said dear wife all my personal estate whatsoever and wheresoever, together with its increase, except such part as shall be hereinafter devised, for and during her natural life; and the above devises of real and personal estate to my said wife is intended as a full consideration for her dower and
36 third of my estate; this I trust she will accept of as an ample and generous provision, considering she has had her own estate secured to her independent of me.

Item.—Whereas there is a contract now subsisting betwixt my son, Samuel Lloyd Chew, and myself, bearing date the thirteenth of May, seventeen hundred and eighty-five, relating to certain tracts of land upon Herring Bay, in Ann Arundel County, and a tract of land in Calvert County, both of the State aforesaid, as will appear by said contract, reference thereto being had, I do hereby give and bequeath unto my said son, Samuel Lloyd Chew, and his heirs forever all the several tracts of land mentioned in the said contract, provided my said son, Samuel Lloyd Chew, his heirs, executors, or administrators, shall fully comply with the conditions thereof; but in case my said son, his heirs, executors, administrators, or assigns, shall refuse or neglect to comply with the conditions of said contract for the space of six months after my decease, then it is my will that my executors hereinafter named shall cause to be sold, by public auction, after having advertised the same six months, as much of the said tracts of land in Ann Arundel County as will be sufficient to discharge my bond to Charles Carroll, esq'r, of Carrollton, with the interest which may be due thereon, and the monies arising from such sale to be applied to the said purpose of discharging said bond and interest.

Item.—I give and bequeath to my said son, Samuel Lloyd Chew, one
37 half of all my personal estate after the death of my dear wife, Elizabeth Chew, to him and his heirs forever; and I also give to my said son after my wife's decease my large silver bowl, one pair of silver candlesticks and snuffers.

Item.—I give and bequeath to my daughter Ann Chew all my lands in Washington County, being one third part of a moiety of a tract of land called Chew's Farm, containing by patent five thousand acres, (the said third being known as number two in the plat on the division which lately took place by agreement,) the other two thirds having been before given by me by deed to my daughters Henrietta and Elizabeth, (which deeds I hereby ratify and confirm,) together with all my interest, which is one third part of the moiety of those parcels of land which may have been added by resurvey or otherwise to said tract of land called Chew's Farm, to her, my said daughter Ann Chew, and her heirs forever, in fee simple. And I also give and bequeath to my said daughter Ann a negro woman called Peg; and her sister Airy, (being the daughter of Daphne,) together with thirteen other negroes of the same ages and sexes, and as nearly as possible equal in value to those I gave by deed to my daughters Henrietta and Elizabeth, to her, my said daughter Ann Chew, and her heirs forever.

Item.—I give and bequeath to my daughter Ann Chew all that
38 tract of land called Sankley or Poppingjay, lying and being in Calvert County, and containing five hundred acres, more or less, to her, my said daughter Ann, and her heirs forever, in fee simple. But whereas there is a contract now subsisting betwixt my son, Samuel Lloyd Chew, and myself, under certain conditions, by which the above said tract of land called Sankley or Poppinggay may eventually become the property of my said son,

Samuel Lloyd Chew, or his heirs; if it should so happen, then in that case and in lieu thereof I give and bequeath the sum of eight hundred pounds sterling money of Great Britain to her, my said daughter Ann Chew, and her heirs forever.

Item.—I give and bequeath to my three daughters Henrietta Mariam Galloway, Elizabeth Crowley Fitzhugh, and Ann Chew one half part of all my personal estate after the death of my dear wife, Elizabeth Chew, to be equally divided among them, and their heirs forever. And I also give and bequeath to my said three daugters and their heirs forever, after the death of my wife, all my plate, except my large silver bowl and pair of silver candlesticks and snuffers before given to my son, to be equally divided among them, my said three daughters, and their heirs.

Item.—I give and bequeath to my son, Samuel Lloyd Chew, one moiety or half part of my right, title, and interest in and to lands devised to me by the will of my mother, Henrietta Maria Dulany, and also of all other
39 lands to which I have a title or claim by inheritance, (not in this will before devised,) to him, my said son Sam'l, and his heirs forever, in fee simple.

Item.—I give and bequeath to my three daughters Henrietta Mariam Galloway, Elizabeth Crowley Fitzhugh, and Ann Chew one moiety or half part of all my right, title, and interest in and to lands devised to me by the will of my mother, Henrietta Maria Dulany, and also of all other lands to which I have a title or claim by inheritance, (not in this will before devised,) to them, my said three daughters, and their heirs forever, in fee simple, to be equally divided among them.

Item.—It is my will and desire that my dear wife, Elizabeth Chew, if she shall conceive it necessary during her life to deliver any part of the personal estate, not exceeding the proportions respectively devised, to my children or their heirs after her decease, shall have a power at her discretion during her life to deliver such a proportion as she may think requisite.

Item.—I give and bequeath to my son Samuel and his wife, and my daughters Henrietta, Elizabeth, and Ann, and their husbands, to each respectively and individually, the sum of twenty pounds currency, to be paid them by my executors in twelve months after my decease, or sooner if convenient.

Item.—It is my will and desire that the estate, real and personal, by this will devised to my daughter Ann Chew, shall be placed in the hands and under the direction of my dearly beloved wife, Elizabeth Chew, and
40 my affectionate friend and kinsman, John Thomas, esq'r, of West River, until she shall arrive at the age of sixteen years, or shall marry, the profit and interest arising therefrom after deducting expenses to be paid to her whenever she may call for it; but if my wife should marry again, in such case, it is my will and desire that the said estate of my daughter Ann be placed in the hands of and under the sole direction of the befere-mentioned John Thomas, esq'r, of West River; and it is my further will and desire that when my said daughter Ann Chew shall arrive at the age of sixteen years, at which period she is to receive possession of her estate, that then she shall have ample power to dispose of the same, real and personal, by will or otherwise, to all intents and purposes in the same manner as if she were arrived at the age of twenty-one years; but if my said daughter Ann Chew shall die before she arrives at the age of sixteen years or shall marry, then in either of those cases I bequeath and give the real estate devised in this will to my said daughter Ann, to be equally divided betwixt my two daughters Henrietta and Elizabeth, to them and their heirs forever, in fee simple, and the personal estate to be disposed of as she may think proper; or if my said daughter Ann shall die without issue, and

not dispose of the said estate, real and personal, by deed, will, or otherwise, in such case I give and bequeath it as before to my two daughters and their heirs forever, in fee simple, to be equally divided betwixt them.

Item.—If my said son, Samuel Lloyd Chew, his heirs, executors, or
41 administrators, shall refuse or neglect to comply in the fullest manner with the conditions of the contract before mentioned, bearing date the thirteenth of May, seventeen hundred and eighty-five, within six months after my decease, and shall attempt to prevent my executors hereinafter named from disposing of a sufficient part of my lands in Ann Arundel County, as is before directed, to discharge my bond to Charles Carroll, esq'r, of Carrollton, and interest which may be due upon it, then in such cases I give and bequeath to my said son, Samuel Lloyd Chew, and his heirs, one shilling sterling, and no more, and the whole real and personal estate in this will devised to my said son, I give and bequeath to my three daughters and their heirs forever, in fee simple, to be equally divided among them.

And lastly, I constitute and appoint my dearly beloved wife, Elizabeth Chew, executrix, and my two affectionate friends and kinsmen, John Thomas, esq'r, of West River, and Samuel Hepburne, esq'r, of Upper Marlbro', executors of this my last will and testament, revoking and annulling all former wills by me heretofore made, ratifying and confirming this to be my last will and testament.

In testimony whereof, I have hereunto set my hand and affixed my seal this twenty-fourth day of November, anno Domini seventeen hundred and eighty-five.

SAM'L L. CHEW. [SEAL.]

Signed, sealed, published, and declared by Samuel Chew, the above-named testator, as and for his last will and testament, in the presence of
42 us, who at his request and in his presence have subscribed our names as witnesses thereto—

REZIN ROWLES,
THOMAS ELLIOTT,
WILLIAM ELLIOTT.

On the foregoing will were the following endorsements, to wit:

QUEEN ANN'S COUNTY, *sct:* THE 29TH DAY OF JULY, 1786.

Then came Elizabeth Chew, one of the appointed executors in the aforegoing will of Samuel Chew, late of Queen Ann's County, deceased, and being one of the people called Quakers, did solemnly and sincerely affirm and declare that the within instrument of writing is the true and whole will and testament of Samuel Chew, late of Queen Ann's County, deceased, that came to her hands or possession, and that she doth not know of any other.

Certified, &c. SOL. CLAYTON,
Reg'r of Wills for Queen Ann's County.

QUEEN ANN'S COUNTY, *sct:* THE 29TH DAY OF JULY, 1786.

Then came Thomas Elliott, one of the subscribing witnesses to the within last will and testament of Samuel Chew, late of Queen Ann's County, deceased, and made oath, on the Holy Evangels of Almighty God, that he saw the testator therein named sign and seal this will, and that he heard him publish, pronounce, and declare the same to be his last will and testament; that at the time of his so doing he was, to the best of their apprehensions, of sound and disposing mind, memory, and understanding, and that he subscribed his respective name as witness to this will in the pres-
43 ence and at the request of the testator and in the presence of Rezin Rowles and William Elliott, the two other subscribing witnesses to the

within will, whom he saw subscribe their respective names as witnesses to this will in the presence and at the request of the testator.

Certified, &c.

SOL. CLAYTON,
Reg'r of Wills for Queen Ann's County.

The above depositions to the within will (of Elizabeth Chew and Thomas Elliott) were taken with a saving to all persons interested in the said will the liberty of contesting the same in as full a manner as if the said depositions had never been taken.

Certified, &c.

SOL. CLAYTON,
Reg'r of Wills for Queen Ann's County.

On the foregoing will were endorsed the following renunciations, to wit:

ANN ARUNDELL COUNTY, *July* 22*d*, 1786.

I, John Thomas, of the county aforesaid, one of the appointed executors in the last will and testament of Samuel Chew, esq'r, late of Queen Ann's County, deceased, do hereby refuse to act as executor to said will in virtue of said appointment, and do therefore renounce all my right, title, and claim to said executorship accordingly, as witness my hand and seal the day above written.

J'N THOMAS. [SEAL.]

Tests: MARTHA her ⋈ mark. THOMPSON.

To the REGISTER OF WILLS FOR QUEEN ANN'S COUNTY.

PRINCE GEORGE'S COUNTY, *July* 22*d*, 1786.

I, Samuel Hepburn, of the county aforesaid, one of the appointed executors in the last will and testament of Samuel Chew, esq'r, late of Queen Ann's County, deceased, do hereby refuse to act as executor to said will by virtue of said appointment, and do therefore renounce all my right, title, and claim to said executorship accordingly, as witness my hand and seal the day and year above written.

SAM'L HEPBURN. [SEAL.]

Witness: THOS. W. CLARK.

To the REGISTER OF WILLS FOR QUEEN ANN'S COUNTY.

In testimony that the foregoing is truly copied from the original now on file in my office, I have hereunto set my name and affixed my official, this 24th day of March, 1864.

[SEAL.]

W. A. JOHNSON,
Reg. Wills for Queen Anne's County.

The deed and last will aforesaid, and the deposition of Kensey Harrison made a part hereof.

Deposition of Kensey Harrison.

Circuit court of the U. S.

DEERY'S LESSEE
vs.
BRIGHT AND OTHERS.

I am connected in the Chew family. Samuel L'd Chew, the younger, married my aunt. Samuel Chew or Samuel L. Chew, the elder, died in the year 1786, according to what I have heard in the family. Samuel Lloyd Chew, the younger, was his son, and Mrs. Elizabeth Chew was his widow. Samuel

Lloyd Chew, the younger, died about 1796 or 1797, intestate, leaving four children, Samuel A. Chew, Bennet Chew, Elizabeth Chew, (who intermarried with William Deary about 1797, and afterwards with Eli Beatty
45 about 1809,) and Henrietta Chew, who married Henry C. Schnebley. Bennet Chew died early in life, intestate, without issue and unmarried. Samuel A. Chew died after 1840; I think perhaps between that and 1843, but my recollection is not distinct; he died intestate, leaving as his heir-at-law Lowman Chew, his only son, who was a lunatic, and died within the last few years, probably within the last two, but my knowledge on this point is not precise. I am seventy-nine years old. Mrs. Deary was the eldest of Sam'l L. Chew's children. Samuel A. Chew was the next, and was about fourteen or fifteen years old when his father died. I was with him when he received the news of his father's death. Bennet Chew was, I think, the youngest. He died about 1799 or 1800, to the best of my recollection.

KENSEY HARRISON.

Were read to the jury according to the usual course of the court, but subject to the exception aforesaid, and the plaintiff then gave in evidence to the jury, subject to the like exception, by William Grason, that in 1802 he was on Kent Island and saw William Bryan, who was then in possession of that part of the lands in controversy, known as Long Point Farm; that said Bryan then told him that he had resided on said farm for several years previously; that said witness frequently saw said Bryan on said farm until 1805; that in 1808 he again said Bryan at a political meeting on Kent Island, in the vicinity of said Long Point Farm, where he, the said Bryan, voted, but the witness did not again see him, the said Bryan, on said
46 farm, nor was the witness on said farm after 1805; that in 1810 or perhaps later, the said Bryan came to reside upon a place which he bought upon the mainland; that there was another farm, part of the lands in controversy, known as the Indian Point Farm, and lying to the west of and between said Long Point Farm and the farm afterwards cultivated by Samuel A. Chew, which the said William Bryan held while he held the Long Point Farm, but sublet to his father; and the said William Bryan, while he held said farms as aforesaid, several times between 1803 and 1805, stated to the witness that he held as tenant of the Chews, but the witness after 1805 never heard any declarations from said Bryan on the subject of his holding; that about 1825 the said Samuel A. Chew took possession of and cultivated between four and five hundred acres of that part of the lands in dispute, which lies to the westward of said Long Point and Indian Point Farms, and north of Tait's fence hereinafter mentioned, and the said Chew built a house thereon, and told witness that the division fence between him and Robert B. A. Tate, who was in possession of the southern half of the land in dispute, had been altered for his (Chew's) accommodation, and that south of that fence was Tate's land; and said witness also testified that all three farms before described were north of Tate's fence aforesaid, and the portion of land so improved by said Samuel A. Chew was reclaimed by him from commons, or what is called sedge fields. And the plaintiff further proved that Samuel A. Chew died possessed, about 1843, of said farm
47 of 4 or 500 acres, and after his death the same was held and possessed in the right and title of Lowman Chew, his son, and sole heir-at-law, who died in the year 1862, and the same is now held in right of his heirs. And the plaintiff then gave in evidence that Elizabeth Chew, the widow and devisee of Sam'l L. Chew, died in 1807; and Mrs. Beatty, the mother of plaintiff, died in 1838, and Eli Beatty, her husband, died in 1859, leaving one child by her, named Edward. The witness further proved that Sam'l A. Chew never was at any time, to his knowledge, in possession of Tait's farm

or of any part of the lands in controversy north of Tait's fence, except the farm of 400 or 500 acres, which was, as aforesaid, in his possession at his death. And the plaintiff further proved that Mr. Deery, the father of the plaintiff, died about the year 1800. The said plaintiff thereupon insisted that the evidence aforesaid was fully before the jury on issue joined between the parties, and declared that his case was closed. But the council for the defendant denying that said evidence was properly before the jury as evidence in chief on the issue joined between the parties, or was in the case for any other than the specific purpose for which it was tendered, renewed their objection aforesaid and insisted that the said evidence did not support the offer as aforesaid, and would not justify the reading in evidence to the jury of said deed as part of the plaintiff's case, and proposed to argue the aforesaid objection. The council for the plaintiff insisted, on the other
48 hand, that the defendant should be required to go in with their case in defence, or to waive the right to offer evidence in defence, and referred to the aforesaid rule of court to show his right to insist that the case should be concluded on both sides before any question relating to the admissibility of said deed under the circumstances aforesaid should be discussed. But the court declared that the evidence so offered was properly read to the court to assist it in the exercise of its judgment upon the admissibility of said deed, and not as evidence to the jury, upon the issue joined by the parties, and did permit the said objection to be discussed, and it was fully discussed by counsel for both parties; and thereupon the court rejected said deed accompanied with the evidence aforesaid, and the plaintiff excepts and this his bill of exceptions is signed, sealed, and enrolled this 21 Nov., 1864.

WILLIAM F. GILES. [SEAL.]

Memorandum.—The defendants, who are within stated to have objected to the testimony offered on the part of the plaintiff, are Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, and Thomas Tanner, who severally disclaimed all right or title to the 400 or 500 acres of land within mentioned as the land whereof the said Samuel A. Chew took possession in 1825, as within stated, and which passed after his death into the possession of his son, Lowman Chew, and this memorandum is to be treated as part of the foregoing exception.

49 TH. S. ALEXANDER,
S. T. WALLIS, *for Def'ts named.*

I agree that this memorandum shall be considered as inserted in the above bill of exceptions.

R. J. BRENT, *for Pl'tff.*

Plaintiff's 3rd bill of exceptions.

After the evidence stated in the aforegoing exceptions made a part hereof, the plaintiff, further to maintain the issue and to derive title in his lessor, and for the purpose of laying a foundation for the admission of the deed from Eleanor Brent and others to Samuel Chew, as set out in the preceding bill of exceptions, then read in evidence, subject to exception, the deed of Philip B. Key to Arthur Bryan, dated 7th May, 1798, made a part hereof.

QUEEN ANN'S COUNTY, *to wit:*

On the seventh day of May, seventeen hundred and ninety-eight, the following deed was brought to be recorded as follows, to wit:

This indenture, made this seventeenth day of March, in the year of our Lord one thousand seven hundred and ninety-eight, between Philip Barton

Key, of the city of Annapolis, of the one part, and Arthur Bryan, of Talbot County, of the other part, witnesseth, that for and in consideration of the sum of seventeen hundred and fifty pounds currency, to the said Philip in hand paid by the said Arthur at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he, the said Philip Barton Key, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, and sell, to the said Arthur Bryan, his heirs and assigns, all that moiety or half part of Kent Fort Manor, on Kent Island, in Queen Ann's County, being the lowermost half part of the said tract of land called Kent Fort Manor, and is the same land and half part of which Mrs. Chew was heretofore seized, supposed to contain eleven hundred acres, more or less, with all the buildings, houses, improvements, benefits, and advantages thereon situate or thereto belonging, to have and to hold the said lower moiety or half part of the said tract of land called Kent Fort Manor, with all its buildings, improvements, and advantages to the said Arthur Bryan, his heirs and assigns, forever. And the said Philip Barton Key, for himself and his heirs, the said lower moiety or half part of Kent Fort Manor on Kent Island, in Queen Ann's County aforesaid, with its appurtenances, to the said Arthur Bryan, his heirs and assigns, doth hereby warrant and defend against all and every person or persons whatsoever.

In witness whereof, the said Philip Barton Key hath hereto set his hand and seal the day and year aforesaid.

PHILIP BARTON KEY. [SEAL.]

Signed, sealed, and delivered in presence of—
JEREMIAH TOWNLEY CHASE.

On the back of the same deed was endorsed as follows, to wit:

MARCH 7TH, 1798.

Received of Arthur Bryan the sum of one thousand seven hundred and fifty pounds current money, in full of the consideration for the within conveyance.

PHILIP B. KEY. [SEAL.]

Witness: JEREMIAH TOWNLEY CHASE.

On the back of the same deed was further endorsed as follows, to wit:

STATE OF MARYLAND, *to wit:*

On the seventeenth day of March, seventeen hundred and ninety-eight, the within-mentioned Philip Barton Key came before me, the subscriber, one of the judges of the general court, and acknowledged the within instrument of writing to be his act and deed, and the lands and premises therein mentioned to be the right, title, and estate of the within named Arthur Bryan, his heirs and assigns; and at the same time came Ann Key, wife of the said Philip Barton Key, and acknowledged and released her right of dower in and to the premises; and being by me privately examined apart from and out of the presence and hearing of her said husband, declared she made the same voluntary and freely of her own accord, without being induced thereto by threats or fear of incurring her husband's displeasure.

Acknowledged before, JEREMIAH TOWNLEY CHASE.

STATE OF MARYLAND, *Queen Anne's County, to wit:*

I hereby certify that the aforegoing is truly copied from Liber S. T. W., No. 4, folios 410 and 411, one of the land records of Queen Anne's County.

In testimony whereof, I hereto subscribe my name and the seal of Queen Anne's County affix, this 24th day of March, A. D. 1864.

[SEAL.] SAMUEL E. DYOTT, *Clerk.*

And further read in evidence, subject to exception, the mortgage
52 deed, dated 28th October, 1786, from Samuel L. Chew to Charles Carroll, made part hereof.

On the 20th day of February, anno Domini 1787, the following deed was received to be recorded among the records of the general court for the Eastern Shore, and accordingly the same day is recorded as follows, to wit:

This indenture, made this twenty-eighth day of October, in the year of our Lord one thousand seven hundred and eighty-six, between Samuel Lloyd Chew, of Herring Bay, in Ann Arundel County and State of Maryland, of the one part, and Charles Carroll, of Carrollton, of the city of Annapolis in same State, of the other part. Whereas the said Samuel Lloyd Chew, at the execution of these presents is and stands justly indebted to the said Charles Carroll, of Carrollton, in the sum of seven thousand pounds current money of Maryland, with legal interest thereon from the sixth day of May last past, and hath passed his bond to the said Charles Carroll, bearing equal date herewith, conditioned for the payment of that sum and legal interest thereon from the said sixth day of March last:

Now, this indenture witnesseth that the said Samuel Lloyd Chew, to secure the payment of the said sum of seven thousand pounds current money and legal interest thereon from the said sixth day of March, and in consideration of the sum of five shillings current money to him in hand paid by the said Charles Carroll at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged by the said Samuel Lloyd Chew and the said Charles Carroll therefrom exonerated and discharged, he, the said Sam-
53 uel Lloyd Chew hath given, granted, bargained, sold, aliened, released, enfeoffed, and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, and confirm, unto him, the said Charles Carroll, of Carrollton, and his heirs, all the following tracts and parts of tracts of land, lying and being in Ann Arundel County, to wit: All that tract of land called Friendship, containing fifty acres of land, more or less; all that tract of land called Chew's Right, containing three hundred acres, more or less; all that tract of land called Carter Bennett, containing four hundred and seventy acres, more or less; all that tract of land called Paca his Change, containing seventy acres, more or less; all that tract of land called Paca's Resurvey, containing forty-five acres, more or less; all that tract of land called the Oblong, containing seventy acres, more or less; and all that tract of land called Him He Meant, containing three hundred and fifty acres, more or less; and all that tract of land originally granted to Ann Chew, the daughter and heir of William Ayres, on the sixth day of August, sixteen hundred and fifty-eighty, beginning at the mouth of a creek called Ayres Creek and running the courses thereof, containing six hundred acres of land, more or less, (which said last tract of land is now known by the name of Ayres,) and together with the aforesaid tracts of land from the plantations lately in the possession of Samuel Chew, deceased, called the Cove Plantation and the Home Plantation. And also all that tract of land on Kent Island, in Queen Ann's County, called Kent Fort Manor, containing
54 two thousand two hundred and forty acres, more or less, lately conveyed to last-mentioned Samuel Chew, together with all houses, buildings, gardens, orchards, woods, underwoods, waters, water-courses, ways, easements, privileges, profits, advantages, and appurtenances whatsoever on the same lands, or either of them, being or to the same belonging, or in

anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits of them, and each of them; and all the estate, right, title, interest, use, trust, possession, property, claim, and demand whatsoever of him, the said Samuel Lloyd Chew, of, in, and to the same tracts of land and parts of tracts of land, and each and every of them. To have and to hold all the said tracts of land and parts of tracts of land above mentioned, with all their and each of their rights, members, and appurtenances, to him, the said Charles Carroll, of Carrollton, his heirs and assigns, to the only proper use and behoof of him, the said Charles Carroll, his heirs and assigns, forever, and to or for no other use, intent, or purpose whatever. And the said Samuel Lloyd Chew for himself, his heirs, executors, and administrators, doth hereby covenant, promise, grant, and agree to and with the said Charles Carroll, of Carrollton, his heirs and assigns, that he, the said Samuel Lloyd Chew, and his heirs, all and every of the said tracts and parts of tracts of land, with their and each of their rights, members, and appurtenances, to him, the said Charles Carroll, of Carrollton, his heirs and
55 assigns, from and against all manner of persons whatsoever shall and will warrant and forever defend; provided always, and this present indenture is upon this condition, that if the aforesaid Samuel Lloyd Chew, his heirs, executors, or administrators, do and shall well and truly pay or cause to be paid to the aforesaid Charles Carroll, his heirs, executors, administrators, or assigns, the said sum of seven thousand pounds current money on or before the sixth day of March, which will be in the year of our Lord one thousand seven hundred and eighty-nine; and shall also on the sixth day of March, yearly, and every year, pay to the said Charles Carroll, his heirs, executors, administrators, or assigns, the legal interest on the said sum of seven thousand pounds current money, calculating the said interest from the first day of March last past, and paying the first year's interest on the sixth day of March next, then this present indenture and every clause, matter, and thing therein contained shall cease and become null and void; and the said Samuel Lloyd Chew doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, grant, and agree to and with the said Charles Carroll, his heirs, executors, administrators, and assigns, that he, the said Samuel Lloyd Chew, his heirs, executors, and administrators, the aforesaid sum of seven thousand pounds current money, with legal interest thereon, according to the provisoe aforesaid, and at the respective times therein mentioned, to him, the said Charles Carroll, his heirs, executors, administrators, or assigns, will well and truly pay.

In witness whereof, the parties to these presents have hereunto in-
56 terchangeably set their hands and affixed their seals the day and year first hereinbefore written.

[SEAL.] SAMUEL LLOYD CHEW.

Signed, sealed, and delivered in the presence of—
DAVID MCMECHEN.
THOS. DUHURST MERRICK.

Be it remembered, that on the twenty-eighth day of October, seventeen hundred and eighty-six, Samuel Lloyd Chew within named appeared before before me, the subscriber, one of the judges of the general court of the State of Maryland, and acknowledged the within instrument of writing to be his act and deed and the lands and premises within mentioned to be the right and estate of the within-named Charles Carroll, of Carrollton, esquire, his heirs and assigns, according to the true intent and meaning of the within deed and the act of assembly in such case made and prouided,

ROB'T H. HARRISON.

I, George Earle, clerk of the court of appeals of the State of Maryland, do hereby certify that the foregoing is a full and true copy taken from Liber J. E. No. , folio 210, &c., one of the land records of the *State of* general court for the State of Maryland, deposited in and belonging to the office of the court of appeals of said State.

In testimony whereof, I have hereunto subscribed my name as clerk and affixed the seal of the said court of appeals of Maryland this 21st day of November, in the year of our Lord one thousand eight hundred and sixty-four.

[SEAL.]

GEORGE EARLE,
Clerk of the Court of Appeals of Md.

And further gave evidence, by said Grason, subject to exception,
57 that the Robert B. A. Tate referred to in the preceding exceptions, was the son and one of the heirs of the aforesaid Susanna Tate, and he held all the property south of the fence aforesaid until 1825, when the same was purchased by Dr. Richard Cray from said Tate, who thereupon left said premises and was succeeded in the possession thereof by Dr. Richard Cray, who married Tate's daughter; that after the death of Dr. Richard Cray, in or about 1829, the witness, as administrator of said Cray and as friend of his family, rented the same land to one Hopkins, who held the same for several years—about six years, as he thinks; that after he left the said part of the lands in controversy was held by Richard Cray, the son of Dr. Richard Cray, deceased, until his death, some 5 or 6 years ago; and his widow, Martha Cray, and her children by him, still hold said part of said tract of land; that the southern part of said lands lying south of said Tate's fence was enclosed during all the time referred to by said Grason by said fence, which ran across Kent Island from west to east; that said fence ran from Northeast Creek across said Kent Island until it reached the edges of a marsh on the east side of said island, and from the end of said fence a water fence (as it is called) was extended into said marsh, but the same did not prevent cattle from trespassing or passing from the north part of said lands in controversy to said south part, nor could any ordinary fence constructed across said island prevent such passing or trespassing, because the shallowness of the water at the end of said water fence allowed such
58 ingress and egress of cattle; and said water fence was during all that time liable to be carried away by ice and freshets; but the same was generally kept up, as far as the witness knows, and there was no other enclosure of the outside of said south part of said lands than by said fence and the water of Chesapeake Bay on the east, south, and west sides of said lands; and it is not usual to enclose land surrounded in part by water by fencing placed on the banks, but the said part of said tract was divided into fields and cultivated by the said parties, Breant and others, since 1799, beyond which the memory of said Grason does not reach.

The plaintiff further gave in evidence, by Mr. Wooters, that he is a deputy clerk in the office of the clerk of Queen Ann's County, and did make diligent search since this suit was brought in and among the record books of wills kept in the office of the register of wills of Queen Ann's County, in the State of Maryland, for the will of William Brent recited in the aforesaid deed from Brent and others to Samuel Chew; and in making said search he searched carefully all the record books containing copies of wills from the year 1835 back to 1786, and many years previously as far back, to the best of his recollection, as 40 years previously as 1786, but no such will of Wm. Brent as recited in said deed of 1786 could be found; but witness did not search among the original wills in said office, nor did he state that there were any

original wills in said office. And the plaintiff also gave in evidence that due search was also made among the records of wills in the office of the register of wills of Anne Arundel County for the will of William Brent
59 as aforesaid, but no such will could therein be found.

And also offered in evidence by Miss Deery, the plaintiff's lessor, for the purpose of showing that Samuel A. Chew did not claim adversarily to her as one of the heirs of his father, Samuel Lloyd Chew; that in 1840 she was at the house of Samuel A. Chew, who was then residing on that part of Kent Fort Manor, of which Loman Chew died seized, and the said Chew declared to her that the whole of said Kent Fort Manor belonged to the heirs of his father, Samuel Lloyd Chew, if they had their (heirs) rights; and that said Samuel A. Chew received from Kinsey Harrison the letter and wrote to said Harrison the reply thereon endorsed, made a part hereof.

CENTREVILLE, 10 *March*, 1840.

Samuel A. Chew, Esq're:

DEAR SIR: Your letter of the 24th of last month reached me on Saturday evening, to which I now with pleasure give you an answer. Mr. John Tilghman and his clerks have carefully examined the records of his office as far back as 70 years, and can find no deed given by Mrs. Chew, your grandmother, or by her agent, Mr. Fitzhugh, to Bryan or any other person whatever. There is a mistake in supposing a deed was given by her. And if any person is in possession of that part of the manor on which stands the vault of your grandfather Chew, it never was conveyed to him or those under whom that person may claim. From my recollection of your grandfather's will, which I examined some years ago, when I get a copy for the case
60 of Mrs. Galloway and Foreman, all that part of the manor which your grandfather owned he devised to your grandmother Chew as her dower or thirds in his real estate for and during the term of her life, after the termination of which it is devised to your father and his heirs forever. She had no longer title to the land longer than her lifetime, which, on her death, descended to the heirs of your father. If any person, then, is in the possession of any part of the manor devised to your grandmother Chew, unless it has been conveyed by your father's heirs, they are not entitled to it. Your letter to me in relation to Ned Creek I sent to Judge Chambers for his inspection, with a view to arrange facts with me to be evidence in the case of Galloway and Foreman, which statement about Ned he agreed should be evidence in the cause. He is very slow in his movements and appears not to be anxious to bring on the trial; but I am going to see him next week, when I expect to have a distinct understanding with him about the matter, and should I be disappointed in doing so, I shall proceed immediately to take the evidence under a commission from chancery. You are not interested in the immediate event of this suit, because Mrs. Galloway is contending for what is bequeathed her in the will of her father, which is one third of one half of the personal estate remaining after the death of her mother. Your grandfather devised all his personal estate, with few exceptions, to your grandmother during her life; after the end thereof he gave one half to your father and the other half to his three daughters. Of course you are more deeply interested than Mrs. Galloway in the remainder of the personal
61 estate, unless you are barred by limitations. Some years ago, when conversing with you on this subject, I told you that, as the administrator of your father, you could recover, if the plea of limitation did not defeat you, but whether Foreman would avail himself of such a defense I could not say. I thought you did not appear to be inclined to hazard a suit under such circumstances, and therefore said no more to you about it. There is certainly no bar to the claim of your aunt, Ann Chew, who married our uncle, Dr. Elisha Harrison, and her interest, as he did not recover it in his lifetime,

belongs to Mrs. Galloway, Mrs. Fitzhugh, and yourself. The testamentary law of 1798, chap. 101, provides that in case the husband does not recover the claim due his wife in his lifetime, or reduce it to judgment, that it shall devolve on her in case she survives him; and if she dies before him and he does not recover it, then it shall go to whoever is her nearest relations on the part of her father. There can be no bar in this case, because there never has been letters of administration on her estate. After the determination of Mrs. Galloway's case you can decide what step will be taken to recover the interest of your aunt, Ann Chew.

The statement of Sheriff Ford in the Hope case is in possession of Mr. Stevens, with his receipt thereon, which I have just seen. Endorsed is a statement from him shewing you are indebted to him $31 45, on payment of which he will deliver it up to you with his receipt thereon for that sum.

Mr. Stevens requested me to ask you to send him his note held by
62 you, which he says is paid. Should it not be convenient for you to come here in a reasonable time, do not hesitate to ask me to attend to this business for you. Mrs. Harrison and myself with great pleasure accept your kind invitation and will visit you some time during the summer, and she begs that you will not fail to bring your daughter to see us whenever you come in this direction, and also your dear boy.

With sentiments of the most sincere respect and regard, your friend and kinsman,

KENSEY HARRISON.

KENT ISLAND, *March* 21*st*, 1840.

Kensey Harrison, Esq're:

D'R SIR: Your kind letter of the 10th inst. has been received covering Mr. Stevens's statement, which would have been attended to long since had Mr. Ford forwarded me a statement of the costs as he promised. I have now taken the liberty of enclosing Mr. Stevens a letter in yours, which be pleased to hand to him. To be candid, I am much hurt that Mr. S. should have laid out of the money he so friendly advanced for me. Never having had much transaction with courts of law, I was not aware of the expenses, and did think that what money I had in the hands of Mr. Stevens would have covered the costs, or this friendly act of Mr. Stevens should have been earlier attended to. I will thank you, my good sir, to make for me the best
63 apology *for me* you can, and take up the statement and send it to me when good oportunity offers. If my dear father, who had the reversion, had executed the deed to Bryan, or any other person, would it have been seen when Col. Tilghman made the examination a short time ago, or could the deed have been recorded in land office at Annapolis, or in any other place or office? When you have leisure you will confer a particular favor to inform me on this subject. With respect to my most (just) *just* claims against Col. Foreman be pleased to give me all the information necessary to govern me in deciding what ought to be done. How can an honorable man justify himself in pleading the act of limitation to get clear of refunding what he has no right to, if it can be recovered? I am very much disposed to try it, and would be happy to secure you in a sum that would make it worthy of your attention, provided it can be recovered. I would undertake to have all the parties bound with to comply with what arrangements I might make; and as it would be so much saved out of the fire, as the saying is, I would say that a most liberal offer ought to be made.

My daughter and myself are much pleased at your and Mrs. Harrison's promise to visit us this summer, and hope sincerely that nothing will occur to prevent us from having that pleasure.

With great respect and esteem, I am, d'r sir, very sincerely, your friend and relation,

SAM'L A. CHEW.

But those of the defendants who had taken defence for all of Kent
64 Fort Manor lying south of Tate's fence, (being the southern portion,) and for the farms called Long Point Farm and Indian Point Farm, objected to the admission of said evidence as against them; whereupon the court sustained the objection, and ruled that the declaration and letter of the said Samuel A. Chew could only be given in evidence to qualify or explain the possession of that part of Kent Fort Mannor which Samuel A. Chew had in possession at the time of said declaration made and letters written. And thereupon the plaintiff excepts; and this her bill of exceptions is signed, sealed, and enrolled this 28th November, 1864.

[SEAL.] WILLIAM F. GILES.

Plaintiff's fourth exceptions.

After the evidence offered as stated in the aforegoing exceptions made part hereof the plaintiff further gave in evidence, by her own testimony, that she had made all due and proper search among all papers which came into her hands, as one of the heirs of her deceased mother, for the will of William Brent aforesaid, and could find no such will, but which papers were all copies; she had no original papers; and also gave in evidence, by Andrew S. Ridgely, that as administrator of Lowman Chew, the son and heir-at-law of said Samuel A. Chew, he received from the committee of said Lowman Chew, who was a lunatic, various papers and letters relating to said lunatic's estate, but no will or copy of the will of William Brent as recited in the said deed of 1786 was among said papers.

And the plaintiff then further to show, in aid of the presumption of
65 law, and for the purpose aforesaid, that the portion of the lands in controversy which lies north of the fence before described as Tate's fence, and which is held by the defendants Murphy and Bright, is held by them under the Chew title, then read in evidence, subject to the like exceptions, the two deeds of Samuel A. Chew to Thomas Murphy and James Bright, made a part hereof.

QUEEN ANN'S COUNTY, *to wit:*

Be it remembered, that on the eighth day of March, eighteen hundred and thirty, the following deed was brought to be recorded, to wit:

This indenture, made this sixth day of March, in the year of our Lord one thousand eight hundred and thirty, between Samuel A. Chew, of Queen Ann's County, in the State of Maryland, of the one part, and Thomas Murphey, of the same county and State, of the other part, witnesseth, that the said Samuel A. Chew, for and in consideration of the sum of four thousand dollars, current money of the United States, to him in hand paid by the said Thomas Murphey at or before the sealing and delivery of these presents, the receipt whereof the said Samuel A. Chew doth hereby acquit, exonerate, and discharge the said Thomas Murphey, his heirs, executors, and administrators, he, the said Samuel A. Chew, hath granted, bargained, sold, aliened, released, enfeoffed, and confirmed, and by these presents doth grant, bargain, sell, alien, release, enfeoff, and confirm, unto the said Thomas Murphey, his heirs and assigns forever, all that tract, part of a tract, or parcel of land situate,
66 lying, and being on Kent Island, in Queen Ann's County, aforesaid, called Kent Fort Manor, commonly known and distinguished as Long Point Farm, and which is contained within the following lines, metes, and bounds, that is to say: Beginning at a cedar post planted in the head of Long Creek, and thence running with the original line of the manor land north eighty-nine degrees east, one hundred and sixty-two perches to the

Eastern Bay; thence down, by and with said bay, south twenty-one degrees east, thirty perches; then south thirty-nine degrees east, forty perches; then south twenty-three degrees east, twenty-six perches; then south fourteen degrees east, forty-four perches; then south eleven degrees east, thirty-four perches; then south four degrees west, eight perches; then south twelve degrees west, thirty-two perches; then south twenty degrees west, twelve perches; then south thirty degrees west, twenty-four perches; then south thirty-six degrees west, one hundred perches; then south thirty degrees west, eighty perches; then south twenty-two degrees west, fifty-four perches; then south eighty-four degrees west, eighteen perches; then north seventy-eight degrees west, forty-six perches, to the middle of Long Creek, aforesaid; and thence by and with the centre of said creek five degrees west, one hundred and five perches; then north twelve degrees fifteen minutes west, one hundred and ten perches; and from thence with a straight line to the first place of beginning, containing four hundred and sixty-one acres and one fourth of an acre of land, more or less, together with all and singular the buildings, improvements, woods, ways, waters, water-courses, rights,
67 liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, and interest whatsoever of him the said Samuel A. Chew, both at law and in equity, of, in, to, and out of the said tract, part of a tract, or parcel of land and premises hereby bargained and sold, or meant, mentioned, or intended hereby so to be, and every part and parcel thereof, with the appurtenances. To have and to hold the said tract, part of a tract, or parcel of land, so as aforesaid described, called Kent Fort Manor, or by whatsoever name or names the same may be called, together with the buildings and appurtenances thereunto belonging, unto the said Thomas Murphey, his heirs, and assigns, to the only proper use and behoof of him, the said Thomas Murphey, his heirs and assigns, forever, and to and for no other use, intent, or purpose whatsoever. And the said Samuel A. Chew, for himself, his heirs, executors, and administrators, doth hereby covenant, grant, promise, and agree to and with the said Thomas Murphey, his heirs, executors, administrators, that he, the said Samuel A. Chew, and his heirs, the said tract, part of a tract, or parcel of land and premises hereby granted, bargained, and sold, and every part and parcel thereof, with the appurtenances thereunto belonging, to him, the said Thomas Murphey, his heirs and assigns, against him, the said Samuel A. Chew, and his heirs, and against all and every person or persons what-
68 soever claiming or to claim any right, title, or interest in and to the same, or any part thereof, shall and will hereafter warrant and forever defend by these presents. And the said Samuel A. Chew, for himself, his heirs, executors, and administrators, doth further covenant, grant, promise, and agree to and with the said Thomas Murphey, his heirs, executors, administrators, and assigns, that he, the said Samuel A. Chew, and his heirs, shall and will at all times hereafter, whenever required thereto by the said Thomas Murphey, his heirs or assigns, at the proper costs and expenses of the said Thomas Murphey, his heirs or assigns, make, do, execute, and acknowledge all and every such further assurance or assurances, deed or deeds, conveyance or conveyances, devise or devises in the law, as he, the said Thomas Murphey, his heirs or assigns, or his or their counsel learned in the law, may or shall advise, devise, or require for the more certain and effectual assuring, conveying, and quieting the possession of the said Thomas Murphey, his heirs and assigns, of, in, and to the said tract, part of a tract, or parcel of land and premises, with the appurtenances, forever.

In witness whereof, the said Samuel A. Chew hath hereto subscribed his name and affixed his seal the day and year first hereinbefore written.

[SEAL.] SAM'L A. CHEW.

Signed, sealed, and delivered in the presence of—
ISAAC WINCHESTER.
HENRY E. GIBSON.

Received, on the day of the date of the aforegoing deed, of and from
69 the within-named Thomas Murphey the sum of four thousand dollars, current money of the United States, being the consideration money mentioned in the said deed.

SAM'L A. CHEW.

Witness: ISAAC WINCHESTER.
HENRY E. GIBSON.

STATE OF MARYLAND, *Queen Ann's County, to wit:*

Be it remembered, that on the sixth day of March, in the year one thousand eight hundred and thirty, personally appeared Samuel A. Chew, party grantor to the aforegoing deed, before us, the subscribers, two of the State of Maryland's justices of the peace, in and for Queen Ann's County aforesaid, and acknowledged the said deed or instrument of writing to be his act and deed, and the lands and premises therein mentioned to be the right and estate of the within-named Thomas Murphey, party grantee in said deed, his heirs and assigns forever, according to the true intent and meaning of the said deed or instrument of writing and the acts of assembly in such case made and provided. Taken and certified the day and year aforesaid by

ISAAC WINCHESTER.
HENRY E. GIBSON.

N. B.—The interlineation in the nineteenth line of the words "with the original line of the manor land," and the word "cedar post," in the eighteenth line, was made before the execution of the within deed.

ISAAC WINCHESTER,
HENRY E. GIBSON.

STATE OF MARYLAND, *Queen Anne's County, to wit:*

70 I hereby certify that the aforegoing is truly copied from Liber T. M., No. 5, folios 363, 364, and 365, one of the land records of Queen Anne's County. In testimony whereof, I hereto subscribe my name, and the seal of the circuit court of Queen Anne's County affix, this 24th day of March, 1864.

[SEAL.] SAMUEL E. DYOTT, *Clerk.*

QUEEN ANN'S COUNTY, *to wit:*

Be it remembered, that on the twenty-first day of January, in the year eighteen hundred and forty, the following deed was brought to be recorded, to wit:

This indenture, made this fourth day of January, in the year of our Lord one thousand eight hundred and forty, between Samuel A. Chew, of Queen Ann's County, in the State of Maryland, of the one part, and James Bright, jr., of the county and State aforesaid, of the other part, witnesseth, that the said Samuel A. Chew, for an in consideration of the sum of three thousand dollars, current money of the United States, to him in hand paid by the said James Bright, jr., before the sealing and delivery of these presents, the receipt whereof he, the said Samuel A. Chew, doth hereby acknowledge, and from every part and parcel thereof doth hereby acquit, exonerate, and discharge the said

James Bright, jr., his heirs, executors, and administrators, he, the said Samuel A. Chew, hath granted, bargained, sold, aliened, enfeoffed, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, and confirm, unto the said James Bright, jr., his heirs and assigns, all that farm
71 commonly called Green's Creek Farm, situate, lying, and being on Kent Island, in Queen Anne's County aforesaid, being part of a tract of land called Kent Fort Manor, which is contained within the metes and bounds, courses, and distances following, that is to say: Beginning for the same at a cedar post at the head of Green's Creek, and runs from thence north twelve degrees east, seventy and four tenths perches; then north seventy-five degrees east, seventy-one perches; then north thirty-five degrees east, twenty-six perches; then north twenty-six degrees east, one hundred and twenty perches; then north thirty-six and a quarter degrees east, thirteen perches; then north forty-five degrees east, nine and eight tenths perches; then north twenty-eight degrees east, eleven and three tenths perches; then south eighty-nine degrees east, eighteen and seven tenths perches, to a stake in the head of Long Creek, all the before-mentioned lines being laid down by and with the division fence then running from the head of Long Creek, by and with the lines of the land of the late Thomas Murphey, to the Eastern Bay; then with the Eastern Bay to Green's Creek; then up the middle of said creek to the place of beginning, containing two hundred and ninety-six acres, more or less—fifty-one and one fourth acres are contained within Long and Green's Creek, leaving two hundred and forty-four and three quarters acres of land—together with all and singular the buildings, improvements, woods, ways, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, and interest whatsoever of him, the said Samuel A. Chew, both at law and in equity, of, in, to,
72 and out of the said tract or parcel of land and premises hereby bargained and sold, or meant, mentioned, or intended hereby so to be, and every or any part or parcel thereof. To have and to hold the said tract or parcel of land so as aforesaid described, called Kent Fort Manor, or by whatsoever name the same may be called, together with the buildings and appurtenances and all and singular other premises hereby bargained and sold, or meant, mentioned, or intended hereby so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said James Bright, jun., his heirs and assigns forever, and to and for no other use, intent, or purpose whatsoever. And the said Samuel A. Chew, for himself, his heirs, executors, and administraters, doth hereby covenant, grant, promise, and agree to and with the said James Bright, jun., his heirs, executors, administrators, or assigns, that he, the said Samuel A. Chew, and his heirs, the said tract or parcel of land and premises hereby granted, bargained, and sold, and every part and parcel thereof, with the appurtenances thereunto belonging, to him, the said James Bright, jr., his heirs and assigns, against him, the said Samuel A. Chew, and his heirs, and against all and every person or persons whatsoever claiming or to claim any right, title, or interest in and to the same, or any part thereof, shall and will hereafter warrant and forever defend by these presents. And the said Samuel A. Chew, for himself and his heirs, doth hereby covenant, promise, and agree to and with the said James Bright, jr., his heirs and assigns, that he, the said Samuel A. Chew, his heirs, shall and will, from time to time, and at all times hereafter, at the reasonable request, cost, and charge of the said James Bright, jr., or
73 any of his heirs or assigns, make and lawfully execute, acknowledge, and deliver all and every such further deed, conveyance, and assurance in the law whatsoever for the better and more fully conveying and

assuring to the said James Bright, jun., his heirs and assigns, the said premises, with the appurtenances, heretofore described and mentioned to be bargained and sold, according to the true intent and meaning of the parties to these presents, as by the said James Bright, jr., or his heirs or assigns, or by any of their counsel learned in the law, shall be reasonably devised or advised and required. In testimony whereof the said Samuel A. Chew has hereunto set his hand and seal on the day and year first above written.

[SEAL.] SAM'L A. CHEW.

Signed, sealed, and delivered in presence of—
WM. T. HAMBLETON.
WM. TANNER.

Received from James Bright, jr., the sum of three thousand dollars, being the consideration expressed to be paid in the foregoing indenture.

SAM'L A. CHEW.

WM. T HAMBLETON.
WM. TANNER.

STATE OF MARYLAND, *Queen Ann's County, to wit:*

Be it remembered, and it is hereby certified that on this fourth day of January, in the year of our Lord one thousand eight hundred and forty, before the subscribers, two justices of the peace of the State of Maryland, in and for Queen Ann's County aforesaid, personally appears Samuel A. Chew, he being known to us to be the person who is named and described as one professing to be a party to the aforegoing deed or indenture, and doth
74 acknowledge the said indenture or instrument of writing to be his act and deed. In testimony whereof we hereunto subscribe our names on the day and year aforesaid.

WM. T. HAMBLETON.
WM. TANNER.

STATE OF MARYLAND, *Queen Anne's County, to wit:*

I hereby certify that the above is truly copied from Liber J. T. No. 3, folio 17 and 18, one of the land records of Queen Anne's County. In testimony whereof, I hereto subscribe my name, and the seal of the circuit court for Queen Ann's County affix, this 24th day of March, 1864.

SAMUEL E. DYOTT, *Clerk.*

The said plaintiff, by her counsel, stating at the same time that she offered said deeds for the specific purpose only of showing that the lands therein described, being parts of Kent Fort Manor, were held by the present possessors, who are some of the defendants in this case, under the Chew title. And thereupon the plaintiff's counsel, insisting that she had shown a sufficient possession of said manor, under and in conformity with the deed of said Brents to said Samuel Chew, and the last will of said Samuel Chew, as aforesaid, to justify the reading in evidence of the deed of 1786 aforesaid, as valid conveyance of title to said Samuel Chew, the grantee therein, upon the whole testimony so given, subject to exception, renewed her offer to read in evidence to the jury the deed aforesaid from Brents to said Chew; but the court rejected the same, and refused to allow said deed to be read as
75 a conveyance of said lands to said Chew. And thereupon the plaintiff excepts, and this her bill of exceptions is signed, sealed, and enrolled the 29 November, 1864.

[SEAL.] WILLIAM F. GILES.

Plaintiff's 5th exception.

After the reading stated in the aforegoing exceptions made a part hereof, and upon all the testimony therein stated, the plaintiff offered to rely upon said testimony, exclusive of the deed so rejected by the court, as sufficient for the jury to presume a valid conveyance to Samuel Chew, the said testator, of the title vested in William Brent, as heir-at-law and possessor, in 1767, of Kent Fort Manor; but the counsel for the defendants, Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, and Thomas Tanner, objected, and insisted that the said evidence was incompetent and insufficient, as against them, for the jury to presume such conveyance of said manor, or any part thereof, to said Samuel Chew, the testator, or those claiming under him, and the court sustained the objection, and refused to allow the counsel of the plaintiff to go before the jury upon such evidence, for the purpose of claiming the benefit of such presumption as against said defendants. And thereupon the plaintiff excepts, and this her bill of exception is signed, sealed, and enrolled this 29th Nov., 1864.

[SEAL.] WILLIAM F. GILES.

Plaintiff's 6th exception.

After the ruling of the court in the last bill of exceptions made
76 a part hereof, the plaintiff's counsel here stated that he had no further evidence to offer in relation to the lands claimed by the defendants, Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, and Thomas Tanner. Whereupon their counsel contended that they were entitled to have a verdict rendered by the jury in their favor before the case further progressed between pl'tff's lessor and defendant Lane, but the court ruled that the case must go on; and the defendant Lane, in order to show that the lessor of the pl'ff had title to only one sixth instead of one third of the land of which Samuel A. Chew held possession in his lifetime, gave in evidence that he held the lands of which Samuel A. Chew died possessed, (being between four and five hundred acres,) as tenant for the heirs of Lowman Chew, the deceased son and heir of said Samuel A. Chew, and then offered to read in evidence the deed of Eli Beatty and his wife, Eliza C., the mother of the plaintiff's lessor, and others, to Samuel A. Chew for all of Kent Fort Manor, made part hereof.

Among the records of Queen Ann's County the *the* following appears to be recorded, to wit:

QUEEN ANN'S COUNTY, *to wit:*

Be it remembered, that on the ninth day of April, eighteen hundred and twenty-two, the following deed was brought to be recorded, to wit:

This indenture, made this twenty-sixth day of October, one thousand eight hundred and twenty-one, betwen Eli Beatty and Elizabeth C. Beatty, his
77 wife, and Henry C. Schnebley and Henrietta Maria Schnebly, his wife, of Washington County and State of Maryland, of the one part, and Samuel A. Chew, of the same county and State, of the other part, witnesseth, that the said Eli Beatty and Elizabeth, his wife, and Henry C. Schnebly and Henrietta Maria, his wife, for and in consideration of the sum of two thousand dollars current money to them in hand paid by the said Samuel A. Chew before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and do hereby grant, bargain, and sell, alien, and enfeoff, unto the said Samuel A. Chew, his

heirs and assigns, all the right, title, interest, and estate, both in law and equity, of the said Elie Beatty and Elizabeth, his wife, and the said Henry C. Schnebly and Henrietta Maria, his wife, of, in, and to all that tract or parcel of land situate in Queen Ann's County, on the Eastern Shore of Maryland, lying about Kent Fort, in the Isle of Kent, bounding upon the west, east, and south by the Chesapeake Bay, and on the north by a line drawn through the woods straight east from the northeasternmost branch of a creek, called Northwest Creek, with a swamp in the bay on the east side of the said creek, containing about two thousand acres of land, patented to a certain Giles Brent, by patent bearing date the seventh day of September, one thousand six hundred and forty, together with the appurtenances, improvements, rights, privileges, and advantages thereto in anywise belonging. To have and to hold unto him, the said Samuel A. Chew, his heirs, and assigns forever, all the right, title, interest, and estate of the aforesaid
78 Elie Beatty and Elizabeth, his wife, and Henry C. Schnebly and Henrietta, his wife, of, in and unto the aforesaid land, premises, and appurtenances. And the said Elie Beatty and Elizabeth, his wife, and Henry C. Schnebly and Maria, his wife, for themselves, their heirs, executors, and administrators, do hereby covenant, grant, promise, and agree to and with the aforesaid Samuel A. Chew, his heirs and assigns, that they, the said Elie Beatty and Elizabeth, his wife, and Henry C. Schnebly and Henrietta Maria, his wife, and their heirs, the aforesaid tract of land and premises to him, the said Samuel A. Chew, his heirs and assigns, against them and their heirs shall and will forever warrant and defend by these presents. In testimony whereof, the said Elie Beatty and Elizabeth, his wife, and Henry C. Schnebly and Henrietta Maria, his wife, have hereto set their hands and seals the day and year first herein afore written. The word branch on the first page interlined before signing.

ELIE BEATTY. [SEAL.]
ELIZABETH BEATTY. [SEAL.]
HENRY C. SCHNEBLY. [SEAL.]
HENRIETTA M. SCHNEBLY. [SEAL.]

Signed, sealed, and delivered in the presence of—
STEWART HERBERT AND BENJAMIN YOE.

On the back of the original deed was thus endorsed, to wit:

STATE OF MARYLAND, *to wit:*

Be it remembered, that on this twenty-sixth day of October, one thousand eight hundred and twenty-one, personally appeared before us, to justices of the peace of the State of Maryland for Washington County, the above-
79 named Elie Beatty and Elizabeth, his wife, and Henry C. Schnebly and Henrietta Maria, his wife, party grantors in the foregoing instrument of writing, and severally acknowledged the same to be their and each of their act and deed, and the lands and premises, interest and thereby bargained and sold to be the right and estate of Samuel A. Chew, therein named, grantee, his heirs and assigns forever, and the said Elizabeth C. Beatty, wife of Eli Beatty, and Henrietta Maria Schnebly, wife of Henry C. Schnebly, being by us to justices of the peace as aforesaid, respectively, privately, examined apart from and out of the hearing of their and each of their husbands, whether they and each of them doth make their acknowledgment of the said instrument of writing willingly and freely, and without being induced thereto by fear or threats by, or ill usage of, their or either of their aforesaid husbands, or fear of the displeasure of their or either of their said husbands, severally say that they and each of them doth make acknowledgment of the same, without being induced thereto by fear or threats by, or ill usage of, their respective husbands, or fear of the displea-

sure their husbands aforesaid, and that they severally acknowledge the same willingly and freely.

Taken and certified before us. STEWART HERBERT.
BENJAMIN YOE.

STATE OF MARYLAND, *Washington County, ss:*

I hereby certify that Stewart Herbert and Benjamin Yoe, whose names are signed to the above acknowledgment, where at the time of sign-
80 ing thereof, and still are, justices of the peace for the county aforesaid, duly commissioned and qualified, and to all his acts as such full faith and credit is, and ought to be, given as well in courts of justice as thereout.

In testimony whereof, I have hereto subscribed my name and affixed the seal of my office, this twenty-sixth day of March, eighteen hundred and twenty-two.

[SEAL.] O. H. WILLIAMS, *Clerk W. Co'ty Court, Maryland.*

MARYLAND, *Queen Ann's County, ss:*

I hereby certify that the aforegoing is a true copy taken from Liber T. M. No. 2, folios 488, 489, one of the land record books of Queen Ann's County aforesaid.

In testimony whereof, I have hereto subscribed my name and affixed the seal of my office, this 8th day of March, eighteen hundred and forty-five.

JOHN TILGHMAN, *Clerk of Queen Ann's County Court.*

CENTREVILLE, 8 *March*, 1845.

Miss Deery's letter of the 3d inst. was handed to me on the 6th inst., and in reply, I have to inform her that the foregoing is the only deed or instrument of writing to be found on the records of this office between any of the parties mentioned in her letter. The deed of the proceeding is a copy that has been taken out of the office, I presume, by Mr. Samuel A. Chew; but is not so noted on our record book, which is our invariable practice.
81 The deed was recorded long before I became an incumbent of the office, and the original probably was soon called for after it was recorded; any further information which may be desired, and can be furnished by the records of this office, will be cheerfully communicated.

I am very resp't, your obd't serv't, JOHN TILGHMAN.

But the plaintiff objected to the said deed as evidence to pass the title of Mrs. Beatty, the mother of plaintiff, lessor, on the ground that the certificate of acknowledgment of the same was defective as to her acknowldgment; and the court overruled said objection and permitted the said deed to be read to the jury; to which ruling of the court and the plaintiff excepts, and this his bill of exceptions is signed, sealed, and enrolled this 29th Nov., 1864.

[SEAL.] WILLIAM F. GILES.

The court then stated to the plaintiff's counsel that as the plaintiff's lessor had showed title as one of the heirs-at-law of Lowman Chew, against the defendant Lane, to an undivided 1-6 part of the 500 acres of said tract of Kent Fort Manor, of which Lowman Chew had died seized, the verdict of the jury against said defendant Lane must be for the plaintiff for that part; but the pl'tff's counsel declined to take a verdict for that part, and
82 stated he did so because the other heirs of Lowman Chew did not dispute the title of the plaintiff's lessor to that part, and that the jury could render a verdict for all the defendants, which they did accordingly.

WILLIAM F. GILES.

And now here, at this day, to wit, the second day of December, in the year of our Lord eighteen hundred and sixty-four, the said John Doe, lessor as

aforesaid, produced to the said circuit court here the writ of the United States of America, for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next; which said writ of error is in the words and of the tenor following, to wit :

83 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the fourth circuit, in and for the Maryland district, greeting :

Because in the record and proceedings, as also in the rendition of judgment of a plea, which is in the said court before you, or some of you, between Eliza C. Deery's lessee, plaintiff, and Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, defendants, a manifest error hath happened, to the great damage of the said Eliza C. Deery's lessee, as by her complaint appears : we being willing that error, if any hath been, should be duly corrected, and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December instant, in said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable R. B. Taney, chief justice of our Supreme
84 Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-three.

Issued the 2d December, 1864.

[SEAL.] JAMES W. CHEW, *Clerk Circuit Court.*

85 The United States of America to Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December instant, pursuant to a writ of error filed in the clerk's office in the circuit court of the United States for the fourth circuit, in and for the Maryland district, wherein Eliza C. Deery's lessee is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Eliza C. Deery's lessee in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the said parties in this behalf.

Witness my hand and seal this second day of December, in the year of our Lord one thousand eight hundred and sixty-four.

[SEAL.] WILLIAM F. GILES.

I acknowledge notice of the above citation, 2d Dec., 1864.

S. T. WALLIS, *Att'y for Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, and Thomas Tanner.*

AND'W STERETT RIDGELY,

Dec. 3d, 1864. *Att'y for Def't Thos. Lane.*

86 **Filed 2d Dec'r, 1864.**

87 In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, is hereby transmitted to the said Supreme Court accordingly.

Writ of error bond.

Know all men by these presents that we, Eliza C. Deery, Robert J. Brent, and Robert H. Carr, are held and firmly bound unto Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane in the full and just sum of six hundred dollars, lawful money, to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 2d day of December, 1864.

Whereas lately, at a circuit court of the United States for the fourth circuit, in and for the Maryland district, in a suit pending in the said court, wherein the said Eliza E. Deery was plaintiff and the said Martha Cray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane were defendants against the said Eliza C. Deery, and
88 she having obtained a writ of error and filed a copy thereof in the clerk's office of the circuit court to reverse the judgment in the aforesaid suit, and citation directed to the said Martha Gray, Thomas Palmer, James Goodhand, John Bright, Henry C. Legg, Thomas Tanner, and Thomas Lane, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next:

Now, the condition of the above obligation is such that if the said Eliza C. Deery do and shall prosecute her said writ to effect, and answer all damages and costs if she fails to make her plea good, then the above obligation to be null and void; otherwise, to be and remain in full force and virtue in law.

ELIZA C. DEERY. [SEAL.]
ROBERT J. BRENT. [SEAL.]
ROB'T H. CARR. [SEAL.]

Witness as to Eliza C. Deery:
MARY KEY BORDLEY.
Witness as to Robert J. Brent and R. H. Carr:
EDWARD POPE.

Endorsed: Bond approved Dec. 2d, 1864.

WILLIAM F. GILES.

In testimony that the aforegoing is a true copy taken and made from the record and proceedings of the circuit court aforesaid, I hereunto sub-
89 scribe my name and affix the seal of the said circuit court, this twenty-first day of January, in the year of our Lord one thousand eight hundred and sixty-five.

[L. S.] JAMES W. CHEW, *Clerk Circuit Court.*

Filed February 24, 1865.

REC. 261—6

DEERY'S LESSEE,
PLAINTIFF IN ERROR,

vs.

GRAY & OTHERS.

IN THE
Supreme Court
Of the United States.

In Error to the Circuit Court of the United States for the District of Maryland.

BRIEF FOR PLAINTIFF IN ERROR.

This is an action of ejectment, brought to recover the Manor of Kent Fort, a tract of land on Kent Island in Chesapeake Bay.

The Record shows (p. 8) that in 1640, Lord Baltimore granted by letters patent the Manor of Kent Fort to Giles Brent; that in 1737, William Brent, the fourth lineal descendant of the patentee, recovered the Manor by ejectment; that in 1785, Elinor Brent, William Brent, Jr., and Daniel Carroll Brent, acting executors of William Brent, deceased, late of the Commonwealth of Virginia, and the said William Brent, Jr., in his capacity of heir-at-law of the testator, conveyed by deed (p. 13) the Manor of Kent Fort to Samuel Chew, who thereupon took possession of the same; and in July, 1786, departed this life, leaving a will, (p. 15,) by which he bequeathed Fort Kent Manor for life to his wife, who died in 1807, with remainder over in fee simple, to Samuel L. Chew, his son; that this latter died intestate about 1797, leaving the following children: Samuel A. Chew, Bennett Chew, who died about 1800 unmarried and intestate; Elizabeth, who intermarried

with Deery, father of lessor of Plaintiff, and after his death with Elie Beatty, and Henrietta, who intermarried with Schnebly.

Samuel A. Chew died about 1843, intestate, leaving one child, Lowman Chew, who died young, unmarried and intestate: so that the Plaintiff's lessor is one of his heirs-at-law.

PLAINTIFFS' EXCEPTIONS—No. 1, 2.

The Plaintiff having proved the foregoing facts, and the further fact that after the date of the deed of 1785 of the Brents to Samuel Chew, he entered into possession; and that since then, down to the time of the commencement of the action, a period of 78 years, the said Chew and his descendants, and parties claiming under and through them, have been in possession of the said Kent Fort Manor, then successively offered to read in evidence the deed of Elinor Brent and others (p. 11) to Samuel Chew, but the Defendants objected to the same; which objection was sustained, and the deed was twice rejected. Record, p. 8–20.

The facts proved in the Record showed a title and possession of Kent Fort Manor, existing in Giles Brent and his descendants, commencing in 1649, and continuing for 145 years, when the possession was transferred to Samuel Chew, and continued in him and persons claiming under him, down to the present day—a period of over 80 years. In all this period of time, extending over two centuries, the title of these parties was never denied, except in 1737, when it was asserted and maintained by the judgment of a Court in an ejectment suit.

All the deeds offered in evidence, as well as all the parol testimony, showed the continuous possession of parcels of the Manor under the Chew title from 1785.

The lessor of the Plaintiff, who is the grand-child of Samuel Chew, offered to maintain her title by reading the deed from the Brents to her grand-father.

This deed, which was duly recorded among the public records just after its execution, purports to be executed

1st.—By the executors of William Brent, the fifth lineal descendant from Giles Brent, the original patentee, in pursuance of a power given to them by their said testator in his will, which power is recited in the deed.

2d.—By William Brent, Jr., who recites that in addition to his being executor, and conveying as such by virtue of the above recited power, he is also heir-at-law of William Brent, deceased; and that he conveyed to Samuel Chew, all his title and interest as such heir-at-law.

It is difficult to see on what ground the Court was justified in rejecting this deed, found in the proper records, as it was the deed of William Brent, the heir-at-law of Kent Fort Manor, even admitting that the will should have been produced, to give validity to the deed o the executors.

The possession of the Manor by his father, in 1867, was duly proved by the extract of the debt book of Queen Anne's County. (P. 11.) The effect of an entry like this, as establishing possession in Maryland, is stated in Casey's Lessee vs. Inloes, 1 Gill, 486.

Succeeding to the legal estate, and seizin of his father, he was competent to convey his title, and his deed would be good and effective, unless a valid will was shown devising the Manor to some one else; and the onus of proving that will, to defeat his deed, rests upon him who alleges it as against the grantee of the heir-at-law.

But the recital of the will and its contents, in this ancient deed, is competent proof, as the possession of the Manor has always been held in harmony with it, and as all the present possessors are claiming under this deed, through the Chew title, which was created by it.

Garwood vs. Dennis, 4 Bin., 314.
Carver vs. Astor, 4 Pet., 83–88.
Crane vs. Astor, 6 Pet., 598.
Bank vs. Benning, 4 Cr. C. C. R., 82.

These decisions are identical with the Law of Maryland.
Casey vs. Inloes, 1 Gill, 430.

The presumption of the existence of the will, and of the recited power, is further strengthened by the fact that it was a recital against

the interest of the widow and heir-at-law, who made it, as one conveyed away her rights of dower, and the other his legal estate; and the further fact that the records of Queen Anne and Anne Arundel Counties had been searched in vain, and that none of the heirs of Chew had, among their papers, any such will; and from the further fact that no search could be made in Virginia, even if it were necessary, by reason of the civil war, which had been raging for three years previous to the trial.

3d Exception.

The evidence of Grayson proves the acknowledgments of W. Bryan in 1802 and 1805, that he held possession under the Chews. (Record, p. 20.) And the agreement of facts shows that William Bryan claimed under Arthur Bryan, whose deed from Key recites the seizin of Mrs. Chew.—(Record, 10 and 21.

The 3d Exception incorporates the deed to Arthur Bryan, under whom all the defendants claim, (p. 21–2,) which recites the seizin of Mrs. Chew, at its date, 1798, the exercise of ownership over Kent Fort Manor in October, 1786, by the mortgage to Charles Carroll of Carrollton, from Samuel Lloyd Chew, (p. 23,) the devisee of the remainder, in fee, subject to his mother's life estate, and the recital therein that this tract had been conveyed to Samuel Chew, deceased—these deeds, superadded to the recital of a purchase from William Brent, as found in the will of Samuel L. Chew, the elder, probated in July, 1786, show clearly not only the recital of the conveyance from Brent, but a possession taken in 1786, and held thenceforth, consistently with the title and limitations of the will of the testator, who was the alleged purchaser. The parol evidence given by Grayson (p. 20) adds to the force of this documentary proof, by showing that the heirs of Arthur Bryan, held under the Chews; and in connection with this, see the agreement in Record, p. 10.

A clearer derivation of paper title, followed by long and harmonious possession, could not be shown. Whether there was sufficient adversary possession, based on an ouster of the Chews, or a known disclaimer of their title, was a question of fact for the jury; but the Court, assuming that the fact of adverse possession by some of the Defendants was made out as matter of law, refused to allow us to prove the declarations of Samuel Chew, in 1840, while in possession of Kent Fort Manor, "that it all belonged to the Chews." This was clearly

admissible evidence, being declarations of a party in possession; and this is the 3d point excepted to.

The 4th Exception

Is a renewal of the offer to read the Brent deed upon the previous evidence, with the additional fact that two of the parties defending this suit, or their privies, had taken deeds in 1830 and 1840, from Samuel A. Chew, the brother of Plaintiff's mother, and who, at the date, was only entitled to one-third part.

We submit that the Court erred in again rejecting this deed upon this mass of proof, showing how it had been followed by possession on the part of the grantee and those claiming under him, down to 1840.

See Record, p. 28–30.

5th Exception.

But it is submitted, even if the Court were right in rejecting the deed, yet it should have permitted the jury to presume a valid conveyance in 1785 of the Brent title to Samuel Chew, and which forms the point of the 5th Exception.

Samuel Chew recited this conveyance in his will as the foundation of his title to the Kent Fort Manor, and all the Defendants' claim under the Chew title, and hence are bound by his admissions. In addition, these presumptions are indulged in favor of ancient possession upon principles too well known to be questioned.

In answer to the argument that no presumption can be indulged in when the proof shows that there exists a defective deed, it can well be answered that here the deed is not defective, but is only incomplete by reason of the want of proof of a recited power and will. But the deed being rejected, could not operate as evidence of a defective deed. If the paper-title had been sustained, the Defendants would then have been put on their defense.

6 H. & J., 153.
20 Md. R., 395.

The deed of Philip Barton Key, (p. 21,) to Arthur Bryan, under which the Defendants claim the southern half of the Manor, was offered by us for the purpose of shewing that it recognized the Chew title by reciting the seizin of Mrs. Chew, who had a life estate, under the will of Samuel the elder, which only expired in 1807, and their possession being taken under this title, there never has been any adverse holding. No conveyance from Mrs. Chew to Key is shown; and hence, the only claim of the Defendants as to one half of the land, is in subordination to and harmony with Plaintiff's title.

As Mrs. Chew, who took a life estate in the Manor, possessed the same in person or by parties claiming under her, no limitations could commence to run until 1807, when she died; nor would the holding over after her life estate expired, create any presumption of adverse possession, without proof of a disclaimer of the title of the remainder and a *scienter* thereof.

4 How., 289.
2 G. & J., 173.
6 G. & J., 80.
10 G. & J., 443.
5 H. & J., 226.

No adverse possession commenced during the life of the husband of Mrs. Beatty, after he became tenant by courtesy in 1809, would bar the Plaintiff claiming in reversion, as he only died in 1859, having married Mrs. Deery, the Plaintiff's mother, in 1809. Record, p. 20.

1 Roscoe Real Actions, 504–6.
1 Chit. Gen. Prac., 747, note a.
10 East., 591.
1 Root, 546.
2 South. R., 711.
1 Harrison, 291.
Coxe's Rep., 359.

That the jury might, upon all this evidence, have presumed mesne conveyances to Samuel C. Chew, the testator.

See 1 Gill, 490.
1 H. &. J., 527.

THE 6th EXCEPTION

Raises the question upon the validity of the deed of Plaintiff's mother (Elizabeth Beatty) to Samuel C. Chew in 1822.—See deed, p. 33.

We allege it to be defectively acknowledged by the *feme covert*, and therefore void.

The formula prescribed by law has not been pursued—in this, that it does not appear to have been acknowledged out of the presence of the husband, as required by Acts of Maryland

1807, Ch. 52, 4, corrected by
Act of 1808, Ch. 73.

The Act of 1714, Ch. 4, § 11, declares that "a *feme covert* shall not be bound, except upon her acknowledgement; and the persons taking her acknowledgement shall examine her *privately* out of the *hearing*, &c., whether she doth, &c., and said persons shall certify her examination, &c., in which case, and by such acknowledgements and certificates, *femes covert*, shall be barred, and not otherwise." This was not the first act enabling *femes covert* to make deeds, but it pursued the language of 1699, Ch. 42, § 51.

By 1766, Ch. 14, § 6, any *feme covert* not a minor, joining with her husband, &c., &c., acknowledging them, or any of them, upon private examination, according to the directions of the recited Act, (1715, Ch. 47,) &c. shall be foreclosed and barred.

Observe that this last Act speaks simply of a private examination, according to the directions of 1715, Ch. 47; and it might well be maintained that under this act, it was enough if the private examination appeared, and the formula of 1715, Ch. 47, as to her being out of the hearing, need not be proved, and on this ground alone, the Court might have affirmed the case of

Webster vs. Hall, 2 H. & McC., 21.

But the Act of 1807, ch. 52, sec. 4, expressly required the examination to be out of the *presence* and *hearing* of the husband.

The strictness in favor of married women. is shown by the proviso at end of

1799, Ch. 103, § 3.

The form prescribed by law must be substantially if not strictly complied with.

1 H. &. J., 294, decides that it is not enough to say that the *feme covert* acknowledged according to the Act of Assembly.

2 H. & J., 231, the word "fear" before ill usage being omitted, vitiated, though inserted afterwards, "as fear of his displeasure."

3 H. & J., 371, shows that independent of the acts, the wife could only alienate by fine or common recovery.

3 Gill, 334, decides that she must acknowledge in the mode prescribed.

11 Md. R., 469, decides that if her acknowledgement is defective, she is to be treated as if no party to the deed, and that not being *sui juris*, she is not chargeable with notice.

19 Md., 13, shows that all these acts are to be strictly construed.

Equivalent words will not do. See 3 H. & J., 243.

ANALOGOUS DECISIONS IN OTHER STATES, &c.

Dewey vs. Campor, 4 Mich., 565.
27 Pennsylvania St. Rep., 22.
" " " " 170.
1 Peters, 328.
1 " 105.
12 " 345.
12 Ohio, 364.
8 B. Monroe, 217.
1 Mann, (Mich.) 380.
25 Miss., 66.

Until 1807, Justices of the Peace (not being of the County Court,) could not take the acknowledgement out of the County where the lands lie and in which grantor resided.

See 1715, Ch. 47, § 8.

1766, Ch. 14, § 3, requires that "the Clerk shall certify that they are Justices of the said Court."

But the Act of 1807, Ch. 52, § 3, allows them to take the acknowledgement within their County, as the Judges of County Court could.

☞ But this certificate is silent as to the place where acknowledged; and there is no presumption that it was within their County—and if no parol proof of the place, it is void.

6 H. & J., 143.

The certificate of the Clerk seems to be required by a construction of the Acts of 1766, Ch. 14, § 3, and 1807, Ch. 52, § 3, in pari materia in respect to the certificate, to warrant recording.

☞ The certificate omits to say that the Justices were sworn, as required by 1766, Ch. 14, § 3.

The deed being defectively acknowledged, was supposed to be saved by the general healing Act of

1858, Ch. 208.

We answer—

1. That this Act was passed after the death of the grantee, Samuel A. Chew, who died before 1843.

   See p. 20, at top.

2. And after the death of Mrs. Beatty, the grantor, who died in 1838. and her husband (tenant by courtesy) died only in 1859.

   Record, p. 20, at bottom.

3. The descent being cast upon the Plaintiff in fee as far back as 1838, subject to the estate by courtesy, the confirming act was void.
8 Md. Rep., 556.

4. The Act of 1858, Ch. 208, is too general, and never was designed to apply to the case where a married woman had not been separately examined, as required by law: it manifestly was designed only to affect cases of parties *sui juris*, and making defective acknowledgments, especially when the curing act was passed thirty-six years after the deed in question.

R. J. & J. L. BRENT,
For Plaintiff in Error.

In the Supreme Court U. S.

December Term, 1866.

ELIZA C. DEERY'S LESSEE, PLAINTIFF IN ERROR

vs.

MARTHA CRAY, JAS. GOODHAND, AND OTHERS.

In Error to the Circuit Court for the District of Maryland.

BRIEF OF DEFENDANTS IN ERROR.

T. S. ALEXANDER,
S. T. WALLIS,
For Defdts. in Error, (except Lane.)

In the Supreme Court U. S.

December Term, 1866.

ELIZA C. DEERY'S LESSEE, PLAINTIFF IN ERROR,

vs.

MARTHA CRAY, JAMES GOODHAND, AND OTHERS.

In Error to the Circuit Court for the District of Maryland.

BRIEF OF DEFENDANTS IN ERROR.

This is an action of Ejectment brought by Eliza C. Deery, the Plaintiff in Error, to recover one undivided third part of a tract of land, called Kent Fort Manor, on Kent Island in the Chesapeake Bay, originally patented to Giles Brent in 1640, and containing one thousand acres, more or less. Before stating the technical position of the controversy, it will conduce to a proper understanding of the merits to condense, in advance, some of the leading facts and their results.

Miss Deery, the Plaintiff below and in Error, is the daughter of Elizabeth Chew, who married William Deery, about 1797. Deery died about 1800, (see p. 21,) and she afterwards married Eli Beatty, about 1809. Elizabeth Chew was the daughter of Samuel Lloyd (or Samuel) Chew the younger, who died about 1796, or 1797, intestate, leaving the said Elizabeth Chew, Samuel A. Chew, Henrietta Chew, (who married Schnebly,) and

Bennett Chew, his children and heirs at law. Bennett Chew, the youngest, died about 1799 or 1800. (See Deposition of Kensey Harrison, pp. 19 and 20.) The effort of the Plaintiff was to trace title, from the original patentee of Kent Fort Manor, to her grandfather Samuel Lloyd Chew, from whom she claimed through her mother, who died, the wife of Eli Beatty, in 1838. Mrs. Beatty left a son by Beatty, who was, of course, the Plaintiff's half-brother and inherited, equally with her, from their mother. Beatty, the husband, did not die till 1859, and the Plaintiff's theory was that he had a curtesy interest till his death in the property in question, so that her own estate therein did not vest in possession till 1859. (See testimony of William Grason at foot of p. 20, &c.) In 1859, the Plaintiff contended that she became entitled to one-half of her mother's share of Kent Fort Manor, and her mother's brother, Samuel A. Chew, having likewise died leaving an only child, Lowman Chew, who was also dead, (see evidence, pp. 20 and 21,) she claimed a still further interest as one of the heirs at law of Lowman Chew. This was the Plaintiff's case, founded on uninterrupted descent of the Manor from her grandfather, Samuel L. Chew, without mesne alienation, and all the matter of her first five exceptions was developed in the effort to establish this case only. After that effort had been rendered ineffectual, by the rulings of the Court, which those five exceptions will disclose, and the Plaintiff's counsel had stated that he had no further evidence to offer against any of the Defendants, except Thomas Lane, (see p. 33,) the counsel of Lane, (who had, until that time, been acting as counsel for the Plaintiff,) gave in evidence that Lane held only as tenant for the heirs of Lowman Chew (the deceased son and heir of Samuel A. Chew, the Plaintiff's uncle,) and that, as such tenant, he held between four and five hundred acres of the land mentioned in the declaration. This tract was not claimed, in any way, by any of the other Defendants, and the Plaintiff's right to her share of it as one of the heirs at law of Lowman Chew, was not disputed by her co-heirs or by Lane,

(p. 35.) But the Defendant Lane, in order ostensibly to show what the interest of the Plaintiff was, offered in evidence a deed executed by Beatty and his wife (Plaintiff's mother) dated the 26th of October, 1822, whereby they joined with Mr. and Mrs. Schnelby (Mrs. Beatty's sister) in conveying to Samuel A. Chew their brother, for the sum of $2000, all their interest in the whole tract in controversy, with warranty, (see p. 33.) The Plaintiff objected to the introduction of the deed thus offered, (see p. 35,) on the ground that the certificate of its acknowledgment by Mrs. Beatty was "defective as to her acknowledgment." The Court over-ruled the objection, and this constitutes the matter of the 6th Exception. But the deed discloses the fact, that unless invalid from a technical defect in the certificate of acknowledgment, it conveyed all Mrs. Beatty's interest in Kent Fort Manor to her brother, and therefore puts an end to all title in the Plaintiff as one of her mother's heirs, leaving her no title at all except as one of the heirs at law of Lowman Chew, her cousin, the son of Samuel A. Chew, her mother's grantee. That title no one disputes. The Plaintiff herself having shown by evidence, that Samuel A. Chew and his son Lowman Chew, after him, died seized of none but the four or five hundred acres held by Lane and not in dispute, (see pp. 20, 21, 22, 28, 30,) and that consequently the Plaintiff, as one of Lowman's heirs merely, had no interest in any but that undisputed share, it follows, that unless the objection to the certificate of acknowledgment of the deed above mentioned to Samuel A. Chew, (p. 32,) can be maintained, the Plaintiff has no case, whatever may be this Court's judgment as to the ruling upon the first five exceptions. The Plaintiff's position, therefore, is the very meritorious one, of a daughter endeavoring to set aside her mother's deed, executed thirty-five years ago, for valuable consideration, and seeking thus to divest the subsequently acquired titles of *bona fide* purchasers for value, on the ground that the Magistrates certifying her mother's acknowledgment of the deed blundered in a formal phrase.

Nor is this all. The Plaintiff, for certain purposes which will hereafter be considered, offered in evidence (pp. 21, 22,) a deed of the "lowermost-half part" of the tract in dispute, from Philip Barton Key to Arthur Bryan, dated May 7, 1798, whereby it appears that the portion so conveyed was out of the Chew family at that date. She further proved, by William Grason, (p. 25,) the continuous possession of the said lower half by Bryan and those claiming under him, from 1799 down to the time of suit brought. It was likewise admitted (see agreement, p. 10,) that the said lower part was assigned by the Court of Chancery of Maryland to Susanna Tate, sister of Arthur Bryan, in the distribution of the estate of the latter in 1802. Even, therefore, if the Plaintiff could maintain her objection to the validity of her mother's deed as aforesaid, she would still have proven herself out of court, as to the lower half of the lands in controversy. As to this part, defence is taken (p. 7,) by the Defendants in Error, Martha Cray, Thomas Palmer, and James Goodhand, and against them, consequently, the Plaintiff, by her own showing, can have no case, in any event. The four or five hundred acres in possession of the Defendant in Error, Thomas Lane, as tenant of the heirs of Lowman Chew, not being in dispute, as has been shown, it follows that the only real controversy of the Plaintiff is with the Defendants, John Bright, Henry C. Legg, and Thomas Tanner, claiming the only two remaining farms of the tract. One of these farms the plaintiff has shown to have been conveyed by her uncle, Samuel A. Chew, on the 8th of March, 1830, (see p. 28,) to Thomas Murphy for $4,000, and the other by the said Samuel to James Bright, Junior, for $3,000, on January 4th, 1840, (p. 30,) so that as to these also her case fails, unless the invalidity of the acknowledgment of the deed from her mother, whereby the said Samuel A. Chew derived title, can be maintained.

The real and decisive question of the case, therefore, is as to the validity of the acknowledgment in controversy, under the laws of Maryland. The Plaintiff having brought the suit to

test that question, naturally endeavored to make out such a *prima facie* case as to compel the defendants to produce the deed in evidence. The counsel for Defendants, being ignorant of the precise points at which so old a title might be assailed, (the Maryland practice not compelling the Plaintiff in Ejectment to disclose these,) of course held the Plaintiff to strict proof from the beginning, and succeeded in keeping her proof from the Jury. Thus it is that the controversy between the Plaintiff and the real defendants presents only points which turn out to be immaterial; and the Plaintiff was compelled to have the material point raised, in a subsequent exception, by a sham defendant, with whom she had no real controversy, and against whom she would not take a verdict, (p. 35.)

The Declaration describes the lands in controversy, by the name of Kent Fort Manor, and also by the courses and calls set forth in the patent. All the Defendants except Lane, pleaded the general issue separately, with defence also on warrant. Lane did not plead at all, and took no part in the trial until after the taking of the 5th Exception, being in reality, as has been said, only tenant of a part of Kent Fort Manor, about the Plaintiff's interest in which there was no controversy. By agreement of counsel, (p. 10,) the defence on warrant was withdrawn, and a plat, mentioned in the agreement, was substituted as showing a correct location of the whole tract. It is sufficient, for the purposes of the argument, to say that the whole tract is divided first, into two parts by a line, below which lies "the lowermost-half part" already referred to, assigned by the Court of Chancery in 1802, to Susanna Tate, and held and claimed now by the Defendants Cray, Palmer and Goodhand. The upper half part is divided into three portions, one, to the east, called Long Point Farm, another next westwardly called the Indian Point Farm, and a third, containing four or five hundred acres, and constituting the whole western part of the upper half. This last is the part which the Defendant Lane held as tenant for the heirs of Lowman Chew deceased, and about which there is no

dispute. The whole tract appears by this plat to have contained two thousand and five acres, instead of one thousand, the rough estimate of the old patent. (See Grason's evidence, p. 21 and p. 25.)

After the swearing of the Jury, the Defendants Cray, Palmer and Goodhand, took defence for all that part of the land constituting the entire southern half, (p. 7.) The Defendant Bright took defence for the Indian Creek Farm, (p. 7,) and the Defendants Legg and Tanner, for the Long Point Farm, (p. 7.) The Plaintiff moved the Court not to receive the papers taking such defences, but the Court allowed them to be filed, (p. 8.)

The Plaintiff then read in evidence the original patent to Giles Brent, (8 to 10,) the agreement mentioned, and the plat therein referred to, together with the printed record of the case of Brent's Lessee *vs.* Tasker, 1 Harris & McHenry's Reports, p. 89, (by consent,) and certain extracts from the debt book of Queen Anne's County, Md., (where the land lies,) in 1767. The case in 1 Harris & McHenry, showed that William Brent, to whom the land had descended from Giles Brent, the patentee, was born March 6th, 1709, and recovered the Manor now in dispute from Tasker, in 1737, against a possession of forty years, on the ground that he was born abroad and had remained an inhabitant and resident of G. Britain and Virginia ever after, and so was within the exception of the Statute of James. The debt book showed payment of public dues upon Kent Fort Manor, by William Brent, in 1767, (p. 11.) The Plaintiff then, to derive title in herself, offered in evidence a deed of Kent Fort Manor, dated May 28th, 1785, from Elinor Brent, executrix and William Brent, Jr. and Daniel Carroll Brent, acting executors of the last will of William Brent, Senior, late of Virignia, deceased, to Samuel Chew of Maryland. The deed recites, (p. 11,) that the deceased, by his will dated January 7th, 1782, had constituted the grantors his executrix and executors and had authorized them to sell and convey the property in

question, which they do, with warranty and covenant to refund in case of eviction. The deed is executed by the grantors, and acknowledged by attorneys as for non-resident parties.

The will referred to in the deed, and creating the alleged authority of the grantors to convey, not having been produced, the deed was not allowed to be read to the Jury, and the Plaintiff thereupon tendered her first Bill of Exceptions, (p. 14.) The Plaintiff then offered to read the same deed in evidence, accompanying the offer with a tender of evidence to show that Samuel Chew entered into possession of the land under said deed, and remained in uninterrupted possession thereof till his death, in 1786; and that after his death it was continuously possessed, down to the time of suit brought, by those claiming under said Chew; and that Plaintiff was one of the heirs of said Chew, and of those claiming under him. Objection having been made to this evidence, the Court, under one of its rules, (see p. 15,) and on suggestion of Defendants' counsel that the evidence tendered might not come up to the offer, refused to consider and postponed determining the objection till the evidence should be heard. Thereupon, the Plaintiff, subject to the said exception, (see p. 20,) read the deed aforementioned and the will of Samuel Chew, (signed Samuel L. Chew,) dated 24th March, 1785, and proven 29th July, 1786, (p. 18,) whereby (pp. 15, 16) he devises to his wife, Elizabeth Chew, for life, and after her death, in fee to his son, Samuel Lloyd Chew, the land known as Kent Fort Manor, "lately purchased of William Brent, Esq., of Virginia." The Plaintiff then, subject to the same exception, (p. 20,) read the deposition of Kinsey Harrison, before mentioned, (pp. 19, 20,) showing the descent of the Plaintiff from Samuel L. Chew, who died in 1786, and the genealogy of the family, which she followed, subject to like exception, (p. 20,) with the evidence of William Grason. This witness proved that in 1802 he was at the Long Point farm, (here claimed by Defendants, Legg and Tanner,) where a certain William Bryan then resided, and con-

tinued, to the knowledge of the witness, to reside, till 1805. In 1808, witness saw said Bryan at a political meeting near said farm, but he never saw said Bryan on the farm after 1805. In 1810, or perhaps later, Bryan bought and came to reside at a farm on the main land. Bryan likewise held the Indian Point farm, (here claimed by Defendant, Bright,) at the same time that he occupied the Long Point Farm; and he told the witness several times between 1803 and 1805, but not later than 1805, that he held as tenant of the Chews. The witness proved no connection of the Chews, in any way, with the Long Point and Indian Point farms, or either of them, later than 1805, or with the lower half of the Manor lands, at any time. He proved that Samuel A. Chew, the uncle of Plaintiff, took possession about 1825, of the tract of between four and five hundred acres, (then commons or sedge-fields,) lying west of the Long Point and Indian Point Farms, of which tract he died possessed in 1843, and his son Lowman after him, in 1862. He showed that Robert A. Tate held the southern half of the tract in dispute, separated from the northern half by a division fence, which Samuel A. Chew told witness had been altered for his (Samuel's) accommodation; and the witness proved that Samuel A. Chew had never, to his knowledge, been in possession of the said southern half, or of any part of the northern half except the tract of between four hundred and five hundred acres which he died possessed of. Witness proved, further, the times at which several members of the Chew family died, and especially that Mrs. Elizabeth Chew, widow and devisee of Samuel L. Chew, the elder, died in 1807.

The Plaintiff's counsel then claimed that this evidence was fully before the Jury, on issue joined, and declared that his case was closed, insisting that the Defendants should go on before the Jury with their case, or waive the right to offer proof in defence. But the Defendants' counsel insisted that the evidence was not before the Jury on the issue joined, but only for the purpose for which it was tendered, viz.: to justify the reading

in evidence of the deed first offered from Brent's Executors to Chew, which the Court had ruled out under the first Exception. They further insisted that the proof given did not come up to the tender, and was insufficient to justify the reception of the said deed in evidence. The Court held this latter view, and that the evidence was not before the Jury as proof to the issue, and allowed the objection to the admissibility of the deed to the Jury in connection with and supported by the other evidence, to be discussed, and finally rejected the said deed accompanied with said evidence. To this the Plaintiff's second Exception was taken, (p. 21.)

The Defendants, Cray, Palmer, Goodhand, Bright, Legg, and Tanner, were the Defendants who objected to the evidence, and they disclaimed all right or title to the four hundred or five hundred acres of land mentioned by Grason as having been taken possession of by Samuel A. Chew in 1825, and having passed at his death to his son, Lowman Chew. (See memorandum, p. 21.)

The Plaintiff then read, subject to exception, (p. 21,) the deed of Philip Barton Key, dated 7th May, 1798, referred to in the opening statement in this Brief, whereby Key conveyed to Arthur Bryan, the "lowermost-half part" of Kent Manor, "being the same land and half-part of which Mrs. Chew was heretofore seized, supposed to contain eleven hundred acres, more or less." She further read in evidence subject to exception, (p. 23,) a mortgage from Samuel Lloyd Chew, dated October 28th, 1786, whereby he mortgaged to Charles Carroll of Carrollton, among other lands, the whole tract called Kent Fort Manor, "containing two thousand two hundred and forty acres, more or less, lately conveyed to Samuel Chew, deceased." She further proved, subject to exception, (p. 25,) the possession, enclosure and cultivation of the lowermost-half of said tract since 1799, by Arthur Bryan, and those claiming under him, down to the Defendant Martha Cray. She further proved by Mr. Wootters, a deputy of the Clerk of Queen Anne's County, that he had searched among

the record books in the office of the Register of Wills of that county, containing copies of wills, for the will of William Brent, recited in the deed from Brent and others to Chew, first offered in evidence, without being able to find said will: that he had searched said books of copies from 1835 to perhaps forty years back of 1786. The witness, however, had not searched among the original wills, nor did he state that there were any original wills there. The Plaintiff also gave in evidence that an ineffectual search for said will had been made among the records of wills in Anne Arundel County. The Plaintiff then, in order to show that Samuel A. Chew did not claim adversarily to her, as one of the heirs of Samuel Lloyd Chew, also offered her own testimony to the effect, (p. 26,) that in 1840 she was at the house of said Samuel A. Chew, who then resided on that part of Kent Fort Manor of which he and his son Lowman after him, died seized, (and which is not in dispute,) and said Samuel told her that the whole of Kent Fort Manor belonged to the heirs of his father, Samuel Lloyd Chew, if they had their rights. She also testified to the effect that said Samuel A. Chew had received a certain letter (p. 26) from his relative, Kensey Harrison, in 1840, and had written a certain answer to it, (p. 27,) whereby it appears that Samuel A. Chew was hunting up a title to the lowermost-half part of the Manor held by Bryan's heirs, and that neither he nor Mr. Harrison knew anything about it.

The Defendants who had taken defence for the Long Point Farm, Indian Point Farm and the lower half, or Bryan's part of the Manor, objected to the admission of Miss Deery's testimony and the letters in question, as evidence against them. The Court sustained the exception and ruled that the declaration and letter of Samuel A. Chew could only be given in evidence to qualify or explain the possession of that part of the tract which Chew had in possession when the declaration was made and the letters were written. The Plaintiff excepted, making this her fourth exception, (p. 28.)

The Plaintiff next proved that she had searched among all the papers which had come to her from her mother, for William Brent's will, without finding it, and also by Mr. Ridgely administrator of Lowman Chew, that he had made a similar search among the papers, which had been given him by the Committee of said Lowman, who was a lunatic, but had not found said will. In order then to show that the Defendants Murphy and Bright held, under the Chew title, the lands held and claimed by them in this case, the Plaintiff offered in evidence two deeds already mentioned, one (p. 28,) from Samuel A. Chew, dated March 6th, 1830, whereby he conveyed the Long Point Farm, part of Kent Fort Manor, to Thomas Murphy for $4000, with general warranty, and the other from Samuel A. Chew, (p. 30,) to James Bright, Jr., dated January 4th, 1840, whereby he conveyed the Green's Creek Farm, (called on the plat Indian Point Farm,) to said Bright for $3000, with general warranty.

The Plaintiff, in offering these deeds, stated by her counsel that they were offered for the specific purpose only of showing that the lands therein mentioned, being parts of Kent Fort Manor, were held by their present possessors, defendants in the case, under the Chew title, (p. 32,) The Plaintiff's counsel then insisted that she had shown a sufficient possession of the said Kent Fort Manor, under and in conformity with the deed of the Brents to Samuel Chew (first offered in evidence) and the will of said Chew, to justify the reading of said deed of 1785 in evidence as a valid conveyance to said Chew, and thereupon on the whole testimony so given, subject to exception, renewed her offer to read said deed to the Jury in evidence; but the Court refused to allow the said deed to be read in evidence as a conveyance to said Chew, and the Plaintiff thereupon took her fourth Exception, (p. 32.)

The Plaintiff then offered to rely on all the testimony aforementioned, exclusive of the deed from the Brents to Chew, as sufficient for the Jury to presume a valid conveyance to

Samuel (Lloyd) Chew of William Brent's title. But the counsel of the Defendants, Cray, Palmer, Goodhand, Bright, Legg, and Tanner, objected that said evidence was incompetent and insufficient against them to presume any conveyance of said Manor, or any part thereof, to said Samuel Chew, or those claiming under him. The Court sustained the objection, and refused to allow the Plaintiff to go before the Jury, upon such evidence, to claim the benefit of such presumption, as against said Defendants. Whereupon the Plaintiff took her fifth Exception, (p. 33.)

The Plaintiff's counsel having then stated (p. 33) that he had no further evidence to offer in relation to the Defendants, Cray, Palmer, Goodhand, Bright, Legg, and Tanner, the counsel for those Defendants insisted that they were entitled to a verdict before the Plaintiff went on against the only remaining Defendant, Lane; but the Court ruled that the case must go on. Whereupon, Lane, in order to show that the Plaintiff had title to one-sixth only, instead of one-third of the land possessed by Samuel A. Chew in his lifetime, (being between four and five hundred acres,) gave in evidence that he held these lands as tenant for the heirs of Lowman Chew, deceased, son and heir of said Samuel A. Chew; and then offered to read in evidence the deed of Eli Beatty and his wife Eliza C., the mother of the Plaintiff, to said Samuel A. Chew, whereby on Oct. 26th, 1821, they conveyed to said Samuel, with general warranty, for the sum of $2,000, all their interest and estate in the lands patented as aforesaid to Giles Brent; Henry C. Schnebly and Maria his wife, the sister of Mrs. Beatty, joining in the conveyance. The Plaintiff objected to the said deed, as evidence to pass the title of Plaintiff's mother, on the ground that the certificate of acknowledgment was defective as to her acknowledgment. But the Court overruled the objection and admitted the deed, to which the Plaintiff took her sixth and last Exception.

The Court then stated to the Plaintiff's counsel, that as Plaintiff, as one of Lowman Chew's heirs, had shown title, against

Defendant Lane, to one-sixth of the five hundred acres of which Lowman Chew died seized, the verdict of the Jury must be for Plaintiff for that part. "*But the Plaintiff's counsel declined to take a verdict for that part, and stated that he did so because the other heirs of Lowman Chew did not dispute Plaintiff's title to that part, and that the Jury could render a verdict for all the Defendants, which they did accordingly,*" (p. 35.) The writ of error, nevertheless, was sued out against all the Defendants, (p. 36.)

It will be seen by these protracted proceedings that the whole of the Plaintiff's case, as far as it went, was confined to two points, and that the scope of her evidence, as amplified from exception to exception, did not seek to go a single step beyond them, viz.:

1. To justify the reading to the Jury of the deed of 1785 from the Brents to Chew; and

2. To justify the Jury in presuming a valid conveyance to Samuel L. Chew of William Brent's title, even after excluding the deed of 1785, as rejected by the Court. (See fourth and fifth Exceptions, pp. 32, 33.)

The deed of 1785, to Chew, being executed by parties professing on its face to be the widow and executors of William Brent, and therefore incompetent to pass the fee, except under the authority of the last will of said Brent, which was not produced, the chain of documentary title was necessarily imperfect, and the defect could only be remedied by proof of such subsequent possession, in conformity with said deed, as would raise a presumption of title in Chew under it, or such other proof as would in itself and by itself be sufficient to raise the same presumption without reference to the deed. In both of these efforts the Plaintiff was unsuccessful, and for reasons which, it is submitted, are clear and conclusive.

1. As to the deed of 1785, unaided by other proof, the action of the Court can hardly be questioned. The deed purports, on its face, to have been executed in virtue of a power, and that power was not produced, or even sought to be accounted for as

absent, under the first exception. It stood, therefore, wholly without foundation as a muniment of title.

Tolman *vs.* Emerson, 4 Pick., 162.

Nor was it aided at all by the fact that William Brent, who was a party to it as executor, was heir at law to his father, as the deed recites. He did not convey as heir at law, but in a different capacity and under a devise inconsistent with and estopping any title in him by descent. To seek to aid the deed by his heirship is consequently to set up something which is incompatible with the very title sought to be derived under the deed. The Plaintiff, therefore, of necessity, endeavored to raise a presumption in favor of the validity of the deed by evidence of possession taken and continued thereunder. But such a presumption is not admissible in a case of the sort. The power on which the validity of the deed depends is one purporting to be created by last will and testament, and to be exercised by parties acting in the capacity of executors. It is, therefore, doubly a matter of record: first, as to the will itself, and next as to the granting of letters testamentary; and being matter of record, "there is certain proof to be obtained, for which a mere presumption ought not to be substituted."

Tolman *vs* Emerson, *ubi supra.*

Records are never presumed.

Weatherhead's Lessee *vs.* Baskerville, 11 Howard, 361.

Smith *vs.* Wilson, 17 Md., 468.

Nor is there room for doubt that both in Virginia, where William Brent resided and died, and in Maryland, where the land lay, last wills of land were matters of record at the time in controversy and long before.

As to Virginia, see *e. g.*

Waddy's Ex'rs. *vs.* Hawkins's Exr's., 4 Leigh., 458.

Budd *vs.* Brooke, 3 Gill, 214, 215.

Godwin *vs.* Lunan, Jefferson's Reports, 108.

In Maryland, by the act of 1715, ch. 39, sec. 29, probate of wills of land was authorized; and subsequently, by the act of 1777, ch. 8, the authority to take such probate was transferred to the Orphans' Courts, whose action thereupon seems to have been conclusive.

Warford's Lessee *vs.* Colvin, 14 Md., 553.

And as to lands in Maryland, title could not pass under wills proven anywhere except in the Orphans' Court of the State itself.

Budd *vs.* Brooke, 3 Gill, 232.

That the grantors in the deed to Chew, conveying as executors, must first have qualified as such, seems also well established. Under the statute of 21 Henry VIII., ch. 4, which still continues part of the law of Maryland, (see Kilty's Report of Statutes, p. 230,) the sale of lands devised to be sold by executors is lawful where made by the survivor, and some of the executors who take on themselves the probate of the will, may sell, though others refuse. This, of course, can only be by reason of the official capacity in which the power is to be executed. The power is incidental to the office and follows it.

Peter *vs.* Beverly, 10 Peters., 564.
Digges *vs.* Jarman, 4 Harris & McHenry, 85.
Carroll *vs.* Andrew, *Ibid.*
Magruder *vs.* Peter, 11 Gill. & J., 241.

The office, therefore, must exist, and it cannot in contemplation of law exist, unless letters testamentary have been granted, upon probate, in this State, of the will appointing the executors.

Such granting of letters is a judicial act, and, like all such acts, must be proven by the record and cannot be presumed.

Cecil *vs.* Rose, 17 Maryland, 102.
Smith *vs.* Wilson, Adm'r., 17 Maryland, 466.
Budd *vs.* Brooke, 3 Gill., 232.
Winchester *vs.* Union Bank, 2 G. & J., 80.

The Plaintiff in Error endeavored to meet the difficulty by evidence (pp. 25, 26) of an ineffectual search made in the office of the Register of Wills in Queen Anne's County, Maryland, among the copies of old wills, (not among the old wills themselves,) by a person not belonging to the Register's office. This search, in itself an insufficient one, by reason of the party searching and the neglect to look among the original wills, established nothing but the fact that the will of Brent was not to be found in the place where it should have been recorded and proven, and by inference, that it never had been placed there or admitted to probate. It showed, if anything, that the record proof required by law could not be had. It was not such evidence as alone the rule admits in the case of records, viz.: loss of the record, and secondary evidence of its contents.

Smith *vs.* Wilson, 17 Md., 468.
Weatherhead *vs.* Baskerville, 11 Howard, 361.

The proof as to the ineffectual search among the papers of the Plaintiff in Error and others, for the will, (p. 28,) certainly does not help the case, inasmuch as its only result is to show that the will could not be found anywhere, either on or off record, a fact which does not much aid the presumption of its existence.

It will be argued on these grounds, that the only evidence by which the authority of the Executors of Brent to make the deed in question could have been established was wanting, and that the proof of facts, *in pais* and otherwise, which was offered to establish a presumption in favor of the deed, was wholly inadmissible.

The argument of the Plaintiff in Error, that the Defendants were estopped, as privies in title, from denying the truth of the recitals in the deed, will be presently shown to be unsupported by the facts.

2. But even if the absence of a record could be supplied by presumption, the proof here was insufficient in law to raise one.

The only possession on which such a presumption could rest, must have been continuous, exclusive, adverse and consistent with the deed which it is invoked to maintain.

Carver *vs.* Jackson, 4 Peters., 84.
Crane *vs.* Morris, 6 Peters., 611.
Horner *vs.* Cilley, 14 N. H., 98.
Hoye *vs.* Swan, 5 Gill, 237.
Casey *vs.* Inloes, 1 Gill, 502–3.
Colvin *vs.* Warford, 22 Md., 396.

There is no evidence that Samuel L. Chew, the grantee in the deed, ever had possession of the Manor. He died in July, 1786, (p. 18,) a year after the execution of the deed. The Brents, who executed it, were themselves non-residents, and there is no evidence that they themselves were ever in actual possession. Samuel L. Chew, the grantee, devised the Manor to his widow for life, (p. 16,) remainder in fee to his son Samuel L. Chew, Jr. In October, 1786, the son mortgaged all his interest in the

Manor, to Charles Carroll of Carrollton, with the right of possession so far as in him might be, (pp. 23, 24.) This mortgage never having been released or paid, so far as is in evidence, the Defendants will contend that its production is fatal to the Plaintiff's case, by showing that the legal title passed out of the ancestor under whom she claims.

Of the widow's possession nothing is shown, except by the recitals of the deed from P. B. Key to Arthur Bryan, produced by the Plaintiff, (pp. 21, 22,) whereby it appears that prior to March 17th, 1798, the date of said deed, she had been seized in severalty, of the "lowermost-half part" of the Manor. This part, described as "the same land and half-part of which Mrs. Chew was heretofore seized, supposed to contain eleven hundred acres, more or less," had before the last mentioned date, fallen into the hands of Key, (it is not known how,) who then conveyed it to Bryan, by whom and the parties claiming under him, (including the Defendants Cray, Palmer and Goodhand,) it has been held adversely to this day. (Grason's evidence, pp. 20, 25.) As to this part then, as has been said, the Plaintiff has proven herself out of court, by showing an adverse and continuous possession, under claim of title, by the said Defendants and their predecessors, commencing prior to March, 1798, only thirteen years after the alleged execution of the Brent deed. Not only is this proof therefore insufficient, in point of length, to raise a presumption in favor of the deed, but as far as it goes, it shows a possession, (following the seizin,) inconsistent with the title passing to Mrs. Chew under her husband's will, viz.: a possession of only one-half of the Manor in severalty, whereas under the will she was entitled to the whole.

And as to the upper-half of the Manor, there is no evidence of possession, by any one, from the date of the Brent deed in 1785, down to 1802, when Governor Grason testifies that a certain William Bryan occupied the Long Point and Indian Point Farms, (p. 20,) and said that "he held as tenant of the Chews." The remaining part of the upper-half, being that

represented by the Defendant Lane and not now in dispute, was "commons," or "sedge fields," and is not known to have been in possession of any one till 1825, when Samuel A. Chew, (uncle of the Plaintiff,) "took possession" of it and "reclaimed" it, (Grason, p. 20,) remaining in possession of it till his death in 1843, after which it was "held and possessed in the right and title of Lowman Chew, his son and sole heir at law, who died in the year 1862, and the same is now held in right of his heirs," (see Plff's proof, p. 20.) The whole of this upper-half was embraced in the mortgage above mentioned to Carroll, and is of course, with the rest of the Manor, shown to have been put out, and to have continued out of the Plaintiff's ancestor as to the legal estate.

The declarations of William Bryan to Gov. Grason, and his possession as tenant of "the Chews," do not come down later than 1805, (Grason, p. 20.) Mrs. Chew, the widow, lived till 1807. To be consistent with the title in aid of which the presumption of possession is invoked, Bryan's possession must therefore have been as her tenant. But it is already shown by the deed from Key to Arthur Bryan, that her seizin is recited to have been of "the lowermost-half," and when the Plaintiff next reaches evidence of title or possession, she further shows that the ownership of the upper-half had not passed and was not held consistently with the will of Samuel L. Chew the elder. Mrs. Chew the widow, died in 1807. Samuel L. Chew the younger, died intestate, in 1796, or 1797, having four children, of whom Plaintiff's mother was one, his heirs at law. Of course therefore, in 1807, at the death of the widow, these heirs were entitled under the will of their grandfather, as tenants in common, to the whole Manor. Mrs. Deery the Plaintiff's mother, was then a widow and *sui juris*, (p. 20, Harrison and Grason's testimony.) Yet we find Samuel A. Chew, in 1825, taking possession, in his own right, (p. 20, fol. 46,) of the four hundred or five hundred acres which he transmitted to his son Lowman, as his heir; and further, on the 6th of April, 1830, (p. 28,) convey-

ing the Long Point Farm, in fee, to Murphy; and on the 4th of January, 1840, (p. 30,) conveying the Indian Point Farm, in fee, to Bright, with covenant of general warranty in both cases, thereby asserting title in his own right, (instead as of tenant in common,) to the whole of the upper half of the tract, besides having (p. 20, fol. 46,) admitted in 1825, when he is claimed to have represented the Chew title, that the lower half belonged to the nephew of Arthur Bryan.

The Plaintiff's proof therefore not only shews a possession inconsistent with the documentary title in every particular, but goes further, and shews title, as to every part of the Manor, vested in the Defendants. And it entirely fails, besides, in shewing any privity of title, which would bind the Defendants by way of estoppel as to the recitals of the Brent deed. The Defendants claiming the lower half of the tract, are in, under a title from Key, which is not traced in any way to the Brents or Chews, and the Defendants claiming the Indian Point and Long Point Farms, are in, under Samuel A. Chew, whose title thereto, in his own right, could not have arisen, as has been shewn, but by a claim adverse to that derivable in due course under the Brent title. If Key and Samuel A. Chew, respectively, had the Brent title in them, they vested it in the Defendants, and if they had not, then the privity of title does not exist, of which estoppel may be predicated.

And the Court below was right in rejecting evidence of Samuel A. Chew's declarations as to the Chew title, (3d Exceptions, p. 28,) offered by the Plaintiff, to bind any of the Defendants, except Lane, inasmuch as said Chew had previously conveyed away both the Long Point and Indian Point Farms, and was in possession only of the tract represented by Lane, and could not qualify by his declarations any possession but that which he had.

It will be argued, on all these grounds, not only that no sufficient presumption was raised as attempted, but that the Plaintiff, by her own proof, had put herself out of Court, in the course of the first five exceptions.

3. The deed of the Brents forming part of the evidence before the Court, under the 5th Exception, there could be no presumption in favor of a derivation of title by any other deed, and the Court, therefore, rightfully ruled that the evidence did not justify any such presumption.

Beale *vs.* Lynn, 6 H. & J., 351.
Owings *vs.* Norwood, 2 H. & J., 96.
Colvin *vs.* Warford, 22 Md., 394.
Lewis *vs.* Waters, 3 H. & McH. 433.

4. The singular position of the case under the sixth exception has already been adverted to, showing the indirect manner in which the real question in controversy is raised on the record. That question is the validity of the deed of Mrs. Beatty and her sister and their respective husbands, executed the 26th of October, 1821, and conveying to Samuel A. Chew all their interest in Kent Fort Manor.

The Court having rejected the evidence offered to raise a presumption of title in Samuel Lloyd Chew, the elder, the case was practically ended as to Lane, not less than the other Defendants; but as the Plaintiff claimed an interest in the farm of which Lane was tenant, not only as one of the heirs of Lowman Chew, but upon the theory that Samuel A. Chew's possession was the possession of his sisters as well as his own, and that the Plaintiff consequently was entitled as heir to her mother as well

as to Lowman, the position was adroitly availed of by counsel to have the deed of 26th of October, 1821, introduced in evidence by Lane, who really had no interest in producing or mentioning it. As soon as produced, it was objected to by Plaintiff, upon the ground of an alleged non-conformity of the certificate of acknowledgment with the requirements of the then Maryland Statute, in regard to acknowledgments by married women.

It will be contended by the Defendants, that the acknowledgment is regular, under the Acts of

1715, ch. 47, sec. 11.
1807, ch. 52, secs. 2 and 4.
1808, ch. 73.
1809, ch. 164.
1815, ch. 71.

Webster's Lessee *vs.* Hall, 2 H. & McH., 19.
Hoddy's Lessee *vs.* Harryman, 3 H. & McH., 581.
Hollingsworth *vs.* McDonald, 2 H. & J., 237.

But even if it were otherwise, the defect is cured by acts of

1831, ch. 205, sec. 2.
1858, ch. 208.

And such legislation is valid and operative under the rulings of this Court and the State Courts of Maryland, and the long established usages of that State.

Watson *vs.* Meiler, 8 Peters., 88.
Charles River Rridge *vs.* Warren Bridge, 11 Peters., 539.
Regents *vs.* Williams, 9 Gill. & J., 413.
Hollingsworth *vs.* McDonald, 2 H. & J., 237.
Budd *vs.* Brooke, 3 Gill., 230.
Baugher *vs.* Nelson, 9 Gill., 306-309.
Mayer *vs.* State, 15 Md., 458.
Tiernan *vs.* Poor, 1 Gill & J., 227.

The deed being valid, the Plaintiff can have no claim to Long Point Farm or Indian Point Farm, which were conveyed away by Samuel A. Chew to Bright and Murphy; and it has already been shown that she can assert none against the lower half of the Manor tract, held adversely for now seventy years by Arthur Bryan and those holding under him. Nothing is left but the tract of which Lane is tenant, and which Plaintiff admits is not in dispute. Even therefore, if the Court erred on the first five exceptions, the cause cannot be remanded under the established rule, the Plaintiff having no case further to litigate.

T. S. ALEXANDER,
S. T. WALLIS.
For Defdts. in Error, (except Lane.)